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Environmental Legislation Held at
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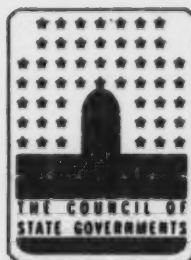
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16. Abstract The 1972 National Symposium on State Environmental Legislation convened in Arlington, Virginia bringing together for the first time all elements of state government and representatives of Federal agencies to develop suggested state legislation on a broad range of ecological concerns. The Symposium represented a joint Federal-State response to two important needs. The first is the need for strong environmental protection programs at the state level. The second is the need to strengthen the Federal-State partnership which is an essential element in the realization of environmental goals. This Summary Report contains the recommendations of each of the ten Symposium workshops.			
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ON STATE
ENVIRONMENTAL
LEGISLATION

Summary Report

March 15-18, 1972



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S U M M A R Y R E P O R T

NATIONAL SYMPOSIUM ON STATE ENVIRONMENTAL LEGISLATION

March 15-18, 1972
Arlington, Virginia

Sponsors

The Council of State Governments

The President's Council on Environmental Quality

Environmental Protection Agency

Department of the Interior

FOREWORD

The National Symposium on State Environmental Legislation convened in Arlington, Virginia on March 15-18, 1972, bringing together for the first time all elements of State government and representatives of Federal agencies to develop suggested State legislation on a broad range of ecological concerns. A unique precedent in intergovernmental cooperation, the Symposium was sponsored by the Council of State Governments and its affiliated and cooperating organizations,* the President's Council on Environmental Quality, the Environmental Protection Agency, and the Department of the Interior. Participants from the States included State legislators from throughout the Nation, representatives of Offices of the Governors, and of the State Attorneys General, and heads of State environmental agencies. Also participating were representatives of a number of other Federal agencies with environmentally-related functions.

The Symposium represented a joint Federal-State response to two important needs. The first is the need for strong environmental protection programs at the State level. The second is the need to strengthen the Federal-State partnership which is an essential element in the realization of environmental goals.

This Summary Report contains the recommendations of each of the ten Symposium workshops. It also includes addresses presented by Governors and top Federal environmental protection officials in plenary sessions. Suggested State legislation prepared by a number of the workshops will be submitted to the Committee on Suggested State Legislation of the Council of State Governments for its consideration and inclusion in its 1973 recommendations to the States, but are not included in this report.

The Symposium Presiding Officer, Ray S. Smith, Jr., Chairman of the Governing Board, Council of State Governments invited comments from its participants on the conduct of the workshops and plenary sessions and resulting recommendations and report. He also solicited suggestions for subject areas for which the 1973 Symposium should develop suggested State environmental legislation. Comments and suggestions should be addressed to either of the following:

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* National Governors' Conference, National Legislative Conference, National Conference of State Legislative Leaders, Committee on Suggested State Legislation, National Association of Attorneys General

TABLE OF CONTENTS

	<u>Page</u>
 Part I - Workshop Reports	
1. Water Quality Permits	1
Operator Certification.....	6
2. Toxic Waste Disposal.....	11
2a. Soil Erosion.....	13
3. Confined Feeding Environmental Control.....	18
4. Air Quality.....	21
5. Solid Waste (Abandoned Vehicles).....	25
6. Noise.....	31
7. State Environmental Policy.....	36
8. Power Plant Siting.....	43
9. Land Use.....	50
10. Historic Preservation.....	53
 Part II - Major Addresses	
Welcome:	
The Honorable Russell E. Train, Chairman President's Council on Environmental Quality.....	55
Address:	
The Honorable Cecil D. Andrus, Governor State of Idaho, Executive Committee, National Governors' Conference.....	58
The Honorable Kenneth M. Curtis Governor, State of Maine.....	63
The Honorable Rogers C. B. Morton Secretary, Department of the Interior.....	74
The Honorable William D. Ruckelshaus Administrator, Environmental Protection Agency.....	81
The Honorable Tom McCall, Governor, State of Oregon.....	92
The Honorable Russell E. Train, Chairman President's Council on Environmental Quality.....	103
Symposium Program.....	108
Symposium Participants.....	109

NATIONAL SYMPOSIUM ON STATE ENVIRONMENTAL LEGISLATION

March 15-18, 1972

Workshop Report
on
WATER QUALITY PERMITS

The Workshop on Water Quality Permits discussed issues raised in the issue paper which was distributed to the group. These issues needed to be resolved in any consideration of suggested State legislation establishing a water quality permit program. The workshop recommends that its resolution of the issues be the basis of the draft of such legislation.

1. The first issue concerned the scope of the waters to be included in the State program. Three questions of coverage were raised: (a) coverage of public non-navigable surface waters; (b) coverage of ground water; and (c) coverage of privately owned waters. The consensus of the group was that the permit program should cover all waters of the State, public, private and ground waters, but only require permits for waste discharges into such waters.
2. The next issue concerned the sources of waste discharges which would be subject to permit. The broad choice here is between covering point sources of pollution, i.e., discrete discharges as opposed to subjecting both point and non-point sources of pollutants, such as agricultural runoff, to a permit system. The Workshop agreed that only point sources should be covered under the State permit program and that non-point pollution should be regulated in some other way. Two approaches to regulation of non-point sources of pollution which were mentioned are, first, the inclusion of all sources of pollution in the enforcement (as opposed to permit granting) provisions of a State water quality law and, second, the control of activities leading to such pollution through land use controls.

Report presented by Robert V. Zener,
Environmental Protection Agency

3. A third issue concerned regulation of small discharges. One means would be through the issuance of general permits covering prescribed classes of such dischargers. The Workshop opposed this approach and agreed that small discharges should be regulated by the permit system covering discharges from municipal treatment plants. If such plants fail to properly regulate discharges into their systems, requiring pre-treatment where necessary and placing such limits as may be required upon the quantity of the waste discharged, action may be taken against the municipal system more effectively than by attempting to permit the extremely numerous discharges into the system.

Supporting actions to reinforce this approach are State-level authority: (a) to sue dischargers into the municipal system in all cases; (b) to require permits for major dischargers into the municipal system (this however, violates the principle of a one-stop permit system); and (c) to take over operation of the municipal system if adequate pre-treatment and other control measures are not maintained.

4. The fourth issue raised concerned the nature of public hearings held on applications for water quality permits. Current Federal legislative proposals require that there be an "opportunity for public hearing" before ruling upon permit applications. The consensus of the Workshop was that undue administrative burden would result from requiring public hearings on all permit applications. There was no consensus as to who has standing to request a hearing. Federal legislation may require that hearings be held upon request of parties other than the permit applicant. One approach, which appeared to have the Workshop's support, would be to require persons requesting hearings to make some minimal showing of the existence of facts making such a hearing necessary or worthwhile.

A further question in connection with hearings is whether hearings held at the administrative level should be adversary hearings on a written record or should be informal hearings such as are presently held under the Federal Refuse Act Permit Program. The Workshop recommends an adversary hearing at some point at the administrative level.

which would be reviewable by a court upon the record made in such hearing. There was support in the Workshop for holding such a hearing before an independent governmental body rather than before the agency which has the power to issue water quality permits.

5. Procedures were discussed with respect to the inspection, monitoring and entry requirements which should be included in a State permit program. The consensus of the Workshop was that personnel from the State pollution control agency should be able to enter the premises of a discharger upon display of an inspection warrant or similar credentials. Where entry has been refused, provision should be made for the issuance of such warrant or credentials upon a showing that the inspection is to be made for the purposes of carrying out statutory responsibilities of the State pollution control agency in implementing its water quality permit program. Such responsibilities could include areawide or industry inspection programs. Probable cause of violations of water quality requirements should not be required in order to obtain the necessary warrant.

6. The sixth issue discussed by the Workshop concerned the proper duration of State permits, and included the question of whether permits should be revised prior to their expiration date. Such revisions could be made for the purpose of incorporating upgraded water quality control requirements or because of other changes in conditions. The consensus of the Workshop was that State legislation need not define the term of permits in any further detail than is contained in the proposed Federal legislation (which currently requires permits to be issued for "fixed terms not exceeding five years"). The issuance of permits for shorter periods would be contemplated in some cases.

The Workshop recommends that during the permit term, the State agency should for cause, be able to require changes in permit terms and conditions, including changes in water quality standards or other control requirements, provided the permittee is given a reasonable time for compliance.

7. The Workshop discussed problems connected with renewals of permits upon their expiration. The consensus of the group is that if periodic monitoring requirements have been adequately maintained, the renewal process can be accomplished with some streamlining of the procedures applicable to initial permit application. Nevertheless, a review of the discharge, including the application of any new standards existent at the time of renewal, would be necessary in all cases. There was no consensus as to whether an opportunity for public hearing in all cases would be required for renewals. A question was raised, however, as to whether an opportunity for public hearings in connection with all renewals might be required under the pending Federal legislation.

8. The next issue concerned the protection which should be accorded by the administrator of the State program, to information submitted in connection with permit applications or monitoring. The consensus of the Workshop is that such protection should be accorded to trade secrets but not to effluent data. Production data would not remain confidential unless such data constituted a trade secret.

9. Provisions for orders requiring pollution abatement of an emergency nature were also discussed. The group's consensus is that the administrator of the State agency should be empowered to issue such abatement orders without the requirement of a prior administrative or judicial hearing, provided that rapid court review of such orders would be available. The administrator should be empowered to issue such orders upon finding imminent hazards to the public health and welfare, including environmental hazards not having an immediate impact upon human health.

10. The last issue concerned approval of State programs under the pending legislative proposals, S.2770 and H.R. 11896. Expectations are that the joint EPA-State Work Group on permit programs and effluent controls will continue meeting to develop means for meeting the requirements of this legislation. The consensus of the Workshop is that EPA should proceed as soon as possible to assess State programs in order to facilitate rapid approval of such programs under whatever legislation ultimately passes.

NATIONAL SYMPOSIUM ON STATE ENVIRONMENTAL LEGISLATION

March 15-18, 1972

Workshop Report on OPERATOR CERTIFICATION

Manpower is a vital factor in the accomplishment of water quality objectives. The effectiveness with which water and wastewater facilities are operated and maintained is dependent upon the quality of personnel employed for these facilities. A valuable tool for assuring employment of qualified personnel is certification. Certification is a legal mechanism whereby a jurisdiction can require individuals engaged in a defined occupation to demonstrate that they are competent to undertake the duties and responsibilities of their occupation.

Federal guidelines promulgated under Section 601.35 of Title 18 of the Code of Federal Regulations for the Design, Operation and Maintenance of Wastewater Treatment Facilities constructed with the aid of federal grants require that grantees "provide a staff of qualified personnel that is adequate to operate the facility efficiently and effectively so as to achieve the highest level of treatment at all times. Qualified personnel shall be those meeting requirements established under the State Certification programs or other requirements established by the State and Federal Governments." Executive Order 11507 "Prevention, Control and Abatement of Air and Water Pollution at Federal Facilities," requires that heads of Federal agencies ensure that facilities under their jurisdiction are properly operated. Among the measures to be taken is that operators of Federal facilities meet certification requirements of the State in which located. In the absence of such State requirements, the Federal agency may set them.

Report presented by Sam L. Warrington,
State Department of Health, Texas

However, there are questions concerning the adequacy of State operator certification programs. The Water Pollution Control Federation completed a survey on this matter. The survey found that 47 States had some type of voluntary or mandatory certification program covering municipal wastewater treatment plant operators and that at least 28 States also required certification of operators of private industry wastewater treatment plants. In assessing the situation, the Federation's Personnel Advancement Committee concluded:

"The survey results demonstrate a tremendous diversity among states and their requirements that seek to establish the qualifications of personnel. While it is desirable to preserve the fundamental responsibility of local and state government to govern the management of facilities, every effort should be directed toward consistency among states in the quality of performance which is demanded. The pollution control mission has become a national thrust and unless integrity of operation is assured on local and state levels the national pollution control effort indeed may fall short of its goal." (Water Pollution Control Journal, April 1970, pp. 511-517, Attachment #1.)

To overcome these generally recognized shortcomings, the Water Pollution Control Federation (WPCF) and the American Water Works Association (AWWA), which to date have provided leadership in efforts to encourage the States to adopt certification laws, have initiated the establishment of an Association of State Boards of Certification (ABC.) Specific objectives of the ABC are to serve as an information center for certification activities, recommend standards and guidelines, facilitate reciprocity between State programs and assist authorities in establishing new programs and updating existing ones. A planning meeting was held in June 1971 at the AWWA Conference in Denver, Colorado, and an ad hoc committee appointed, composed of representatives of eight State certification programs and two members from the professional associations.

The suggested State legislation is a revision of the "short form" model law developed in 1966 by the WPCF, AWWA and CSSE. The original model law for mandatory certification provided for the classifying of all public potable water supply systems and wastewater treatment plants used by the public and the examination of operators and certification of their competency to supervise the operation of such facilities. It also prescribed the powers and duties of the State director and a board of certification.

The revised suggested legislation extends the original short form model law. It is intended to facilitate State participation with a nationally recognized board of certification authorities, such as the ABC, by providing specific authority for the State director to cooperate with other States, the Federal Government, and a nationally recognized certification organization in the continuing development and implementation of mandatory certification and related programs.

The revised proposal also specifically covers industrial wastewater treatment plants and contains certain provisions of the original "Long Form" model law such as reciprocity, definitions of terms together with legal refinements.

No attempt was made to develop specific rules and regulations contained in the original "Long Form." Relative to this, a study is planned by EPA, in cooperation with the associations and the ABC Committee, of the factors to be considered in the development of an effective approach to certification for operators. Factors to be studied include the respective roles of Federal and State water quality agencies and administrative procedures and capabilities needed for proper administration of a certification law. Outputs of the study will (1) identify elements which may further impact the suggested law and (2) provide recommendations concerning the rules and regulations which can be used by the State to more effectively administer a mandatory certification program.

Issues

Issues identified during the preparation of the suggested law which should be covered in the proposed study and which should be considered by anyone following the suggested law are:

1. The suggested law requires certification for the person responsible for the operation of the facility. However, the Workshop feels that certification should be required of any employee whose actions affect the quality of the product. This would include shift supervisors, laboratory technicians, and supervisors and inspectors of water and sewer installation and maintenance activities.
2. There is a need for a more definitive statement with regard to the responsibility of the owner or the public official for seeing that a certified operator is employed, especially prior to the start-up of a new facility.
3. Consideration should be given to extending certification requirements to key occupations in other environmental areas, typically, well drillers, landfill operators, pesticides control operators and swimming pool operators.
4. The suggested law was written in terms of a single environmental agency head being in charge of the certification program. However, some States may elect to make other organizational arrangements with respect to the administration of that program. Nevertheless, the basic content of the suggested law can be applied to varying organizational situations.
5. The Workshop recognizes that many States have adopted certification programs, some mandatory, other voluntary, all with varying degrees of effectiveness. However, it is suggested that these States review their existing certification legislation relative to three needs: (a) more effective operation of facilities; (b) response to technological changes which have already occurred and which will continue to occur; and (c) participation in the "nationally recognized association of certification authorities."

6. The Workshop recognizes that certification alone will not assure that a competent qualified work force will be available in the future. Accordingly, each State should have capabilities to ensure the effective and economical recruitment, development, training, retention, and utilization of the manpower required by State and local agencies and by industrial and other private organizations to carry out their water supply and water pollution control responsibilities. Essential elements of this capability should include:

a. the forecasting of manpower and training needs, and planning of programs to meet such needs, in cooperation with the appropriate State and local education and manpower agencies,

b. the developing and conducting of training programs to meet training needs that cannot be met through existing educational systems and, otherwise the augmentation of the education and training provided by such existing systems,

c. the providing of technical assistance to public and private employers in their planning and implementation of manpower development activities, and advice relative to manpower recruitment, retention and utilization.

NATIONAL SYMPOSIUM ON STATE ENVIRONMENTAL LEGISLATION

March 15-18, 1972

Workshop Report on CONTROL OF TOXIC WASTE DISPOSAL

Nearly all States have provided in a general way, whether by statute or by regulation, for control of the disposal and storage of toxic wastes to the air, in surface waters, on the land, and in underground formations. Frequently however, such provisions lack specificity and fail to address the unique problems of toxic waste disposal. The magnitude of the toxic waste disposal problem is enlarged by the increased practice of storing or burying untreated toxic wastes which can create future environmental problems. Thus, the enactment of specific State laws to deal with this problem would be timely and warranted.

Therefore, the Workshop recommends that the Council of State Governments, in cooperation with the Environmental Protection Agency, develop, as soon as possible, suggested State legislation to control and to otherwise regulate the disposal of toxic wastes. Such legislation should standardize the definitions of critical terms and phrases associated with this problem, to ensure, to the extent possible and desirable, uniform application nationwide. The suggested legislation should meet the needs of the States and yet be consonant with national goals and requirements as expressed in Federal Water Pollution Control legislation and other related Federal statutes. Finally, such legislation should be sufficiently viable to allow individual States to address unique local problems not otherwise covered by the Federal Act.

The suggested State legislation should include, but not be limited to, the following considerations:

1. A logical regulatory scheme for assuring use of the most environmentally-acceptable disposal alternative for each toxic pollutant.

Report presented by the Honorable Bill Clayton, State Representative, Texas

2. The prohibition against the disposal of toxic wastes, either complete or in excess of a specified amount, where a determination is made that such disposal would be inherently dangerous.
3. For disposal location and procedures for certain types of toxic wastes, advance review and issuance of a permit on a case-by-case basis.
4. Issuance of permits upon a determination that the placement of toxic wastes on the land or in the subsurface area will not degrade potable water supplies or other valuable or potentially valuable resources.
5. Appropriate monitoring of all disposals requiring a permit.
6. Regulatory agency command of an adequate assortment of enforcement mechanisms to assure compliance with its permits and regulations.
7. Encouragement of a continued updating of the list of toxic pollutants, and the research and development of methods for treating toxic wastes for ultimate disposal or recycling.
8. Establishment of incentives leading to the establishment of regional centers for interim storage and processing or reprocessing of toxic wastes.
9. Care in transporting toxic substances to final disposal.

The Workshop also recommends that an appropriate fee schedule, designed to finance a toxic waste control program and based upon the volume and relative toxicity of the waste being disposed, be developed and be made available to the States with the suggested legislation, but not as an integral part of it.

Finally, the Workshop requests that its members and any other organizations and individuals deemed appropriate by the Council of State Governments and the Environmental Protection Agency, be afforded the opportunity to review and comment on the suggested legislation prior to its submittal to the States in final form.

NATIONAL SYMPOSIUM ON STATE ENVIRONMENTAL LEGISLATION

March 15-18, 1972

Workshop Report on SOIL EROSION

This Workshop was held in conjunction with a special committee from the National Association of Conservation Districts which is currently developing erosion and sediment control legislation. The National Association of Conservation Districts (NACD) represents 3,027 local conservation districts which include over 98 percent of the privately-owned land in the nation. These conservation districts, organized under State law, have as their mission the wise use, care, and management of the nation's land, water, and related resources. They have been deeply involved in erosion and sediment control for over 30 years. The workshop was chaired by Sam Studebaker, Tipp City, Ohio, Past President of NACD.

As background for the discussion, Dale M. Cochran, Minority Leader of the Iowa House of Representatives, reported on progress under the 1971 Iowa sediment control legislation. He was a member of the committee which developed this erosion and sediment control legislation. He stated **that** they have a legislative program to control Iowa's number one pollution problem--soil erosion. This is an amendment to the Iowa conservation district law and places major responsibilities for carrying out the act with the State Soil and Water Conservation Commission and the local conservation districts.

The workshop heard a report on erosion and sediment control work under the Maryland State legislation which amends their Water Resources Law. Edward Keil, Director of Soil Conservation Service work in the Caribbean area, reported on erosion and sediment control through the new Virgin Islands Environmental Protection Bill. This is administered with an "earth change permit" procedure through the conservation districts.

Report presented by the Honorable Dale M. Cochran, Minority Leader, House of Representatives, Iowa

Mary Garner of the Office of the General Counsel, U. S. Department of Agriculture, presented a paper on "Approaches to Urban and Rural Erosion and Sediment Control Administrative and Legislative Actions to Extend State Programs."

The Workshop reviewed and analyzed the State laws that have been enacted, as well as laws now being considered in several States, for erosion and sediment control as well as proposed Federal legislation in this area.

Pursuant to these discussions the Workshop group agreed and recommended that:

1. Responsibility for an erosion and sediment control regulatory program should be placed in the conservation districts which have the responsibility under the laws of all fifty States for the control of erosion and sedimentation. This would be in conjunction with, but would not replace, those State and local regulatory programs concerned with the quality of soil and water resources and pollution abatement activities.
2. Suggested State erosion and sediment control legislation should be drafted along the following lines in the form of an amendment to the conservation districts' enabling law:

PRINCIPLES

SEDIMENT AND EROSION CONTROL AMENDMENTS TO CONSERVATION DISTRICTS LAW

Sec. 1 Declaration of findings, policy, and purpose.

Recognize that the rapid shift in land use from agricultural to non-agricultural uses, changes in farm operations and ownership, and the construction of highways, airports, residential housing, and commercial developments have accelerated the process of soil erosion and sedimentation damages, which conditions require the strengthening and extension of present erosion control activities and programs for both rural and urban lands, and declare it to be the policy of the Legislature to establish a comprehensive and coordinated erosion and sediment control program to conserve the lands and protect the waters of the State.

Sec. 2 State erosion and sediment control program.

Provide for the development and coordination of a comprehensive State erosion and sediment control program by the State soil and water conservation commission, or comparable State agency having administrative jurisdiction of soil conservation districts, in cooperation with the water quality control agency and other appropriate State and Federal agencies. The State commission should be required to develop statewide plans; and standards, criteria, and guidelines for use by local agencies in providing for erosion and sediment control.

Sec. 3 Conservation district plan (or program).

Require each conservation district to develop by a certain date a plan consistent with the State plan for erosion and sediment control. Require the State commission to assist the district in preparation of such plan, and to review and approve the completed plan. Provide for a public hearing by the district or the commission in the preparation and adoption of the plan. Where there is no conservation district, the county governing body should be required to adopt the plan. If a district fails to develop a plan by the specified date, the State commission should be required to develop a plan for the district.

Sec. 4 Prohibition of earth moving activities without an approved plan.

Require that no person may engage in any earth moving or land disturbing activity until he has submitted to the appropriate conservation district a plan for erosion and sediment control in connection with such activity and such plan has been approved by the district.

Sec. 5 Approval by State commission of plans in connection with earth moving activity.

Require that plans for erosion and sediment control be submitted to the State conservation commission for approval when the activities proposed involve State projects, State lands, or lands in more than one soil and water conservation district.

Sec. 6 Permits.

Require that no grading, building, or other permit for activities involving earth moving may be issued by an agency authorized to issue such permits without submission by the applicant of an approved plan for erosion and sediment control, and a certification that such plan will be followed. Provide that these requirements are in addition to other provisions of law relating to the issuance of permits.

Sec. 7 Agriculture and forestry lands having a conservation plan.

Provide that the provisions of the Act are not applicable to agriculture or forestry lands if the owner or occupier has a conservation plan approved by the conservation district which has been, or is being, put into effect and maintained according to the technical standards of the district.

Sec. 8 Appeals.

Provide for appeal to the State agency from decisions of the local agency and for judicial appeal therefrom.

Sec. 9 Inspection and enforcement.

Provide for inspections to determine performance and adequacy of the plan, and for enforcement procedures. These could be conducted by the conservation district or by other local authorities.

Sec.10 Penalties and injunction authority.

Sec.11 Appropriation.

Sec.12 Cost-sharing.

Provide for public cost-sharing where permanent conservation practices are required on privately-owned rural lands.

This recommendation carries out the concept of utilizing existing legislation to meet environmental needs rather than the enactment of new laws.

3. The Workshop agreed to appoint a task force to draft specific provisions of a suggested State law on erosion and sediment control for submission to the Council of State Governments by May 1, 1972.

The following persons were appointed to serve on the task force:

Mary M. Garner, Office of the General Counsel,
U.S. Department of Agriculture, Chairwoman
Norman Berg, Associate Administrator, Soil
Conservation Service
Mason Carbaugh, Director, Virginia Soil and
Water Conservation Commission
Dale Cochran, Minority Leader, Iowa House of
Representatives
Jane Mapes, Office of Intergovernmental Programs,
Environmental Protection Agency
Robert Thronson, Hydrologist, Environmental
Protection Agency

NATIONAL SYMPOSIUM ON STATE ENVIRONMENTAL LEGISLATION

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Workshop Report
on
CONFINED FEEDING ENVIRONMENTAL CONTROL

The problems associated with animal waste management and environmental pollution resulting from confined animal feeding activities are well recognized. At present, a total of 10 States have acted to formulate laws and regulations governing the construction, use, and operation of confined animal feeding facilities. Many States presently rely upon the anti-pollution provisions of water quality standards--an approach not highly effective in achieving pollution control. Suggested State legislation for the regulation and control of the environmental effects of confined animal feeding activities is therefore needed.

The suggested State legislation recommended by the Workshop finds its origin in workgroup deliberations at Airlie House in Virginia on September 28-30, 1971. A proposal developed during this meeting was subsequently considered and refined through the joint efforts of the U.S. Department of Agriculture, the Environmental Protection Agency, and the President's Council on Environmental Quality. Further review and revision of the suggested legislation was provided by the National Task Force on Animal Waste Management, established by resolution at the Airlie House Symposium, for the purpose of implementing recommendations of that Symposium. Members of the Task Force included representatives of the beef cattle, dairy, poultry, and swine producing associations and representatives from each of the three Federal agencies.

Legal, social, technical, and economic aspects were duly considered by the Workshop participants in the formulation of the suggested State legislation. Major emphasis was upon providing assurance of uniform and needed compliance with applicable environmental pollution control standards and criteria.

Report presented by Kenneth M. Mackenthun,
Environmental Protection Agency

The suggested State legislation would provide generally for the regulation of the construction and operation of confined animal feeding facilities within the State for the control, prevention, and abatement of potential or actual environmental pollution. The administering agency head would be empowered to regulate the construction, modification, and operation of confined feeding operations through a system of permits, and to enforce statutory and regulatory provisions and permit conditions through civil and criminal penalties and injunctive relief. A permit would require compliance with all applicable standards and criteria related to water quality, air, solid waste disposal, odor and other environmental quality values and/or application of all reasonable control efforts consistent with best practicable technology. Permit issuance would be based upon minimum numerical criteria, as deemed appropriate by the State for animal waste intensity and animal wasteload equivalency units.

Considerable discussion was devoted to the mechanics of implementing a permit system. Among revisions made to the working draft was the substitution of an indeterminate period for the five year period during which an operating permit could be held. If, upon inspection and review of the confined feeding operation within five years from the date of permit issuance, the facility is found in compliance, the permit would be renewed.

The term "confined feeding facility" had been originally defined in terms of specified animal units. The Workshop concluded that the number of animal units ought to be determined by each State in recognition of the unique and varying conditions which exist in confined animal feeding operations in individual States and regionally. Animal waste load equivalencies were provided as a footnote to aid in the extension of the animal unit concept beyond beef cattle (the established standard of reference).

The provision setting forth the legislative purpose was revised to include a statement reflecting the need to meet ever-increasing meat and animal product demands,

as well as the need to minimize law suits, particularly those suits based upon common law rights against nuisance, against operators who comply with permit terms and conditions. To carry forth this purpose, a provision was added in the suggested legislation which declares that compliance by the permittee with the applicable standards shall be deemed prima facie evidence that a nuisance does not exist.

Suggested criteria for permit application and issuance and suggested guidelines for design, construction and management standards criteria were considered by the Workshop. It was thought that these criteria and guidelines could serve as a guide to the regulatory agency responsibly for administration of a confined feeding environmental control act.

NATIONAL SYMPOSIUM ON STATE ENVIRONMENTAL LEGISLATION

March 15-18, 1972

Workshop Report on AIR QUALITY

Upon enactment of the Air Quality Amendments of 1970, the Environmental Protection Agency proposed a list of requirements to be added to the Suggested State Air Pollution Control Act published in 1967 as Suggested State Legislation by the Council of State Governments to conform it to the Federal Act. These additional requirements subsequently were approved by the Committee on Suggested State Legislation in June 1971, for publication by the Council of State Governments in the 1972 SSL.

While all States had, by last year, adopted air pollution control laws, a draft document on State air quality legislation was developed to serve as a basis for discussion in the Air Quality Workshop. That draft took into account the provisions of the 1967 Suggested State Act, the 1970 Federal amendments, and recent technological, social, economic and political developments. It was thought that this represented an up-to-date, progressive and aggressive proposal which could serve as the basis for Workshop discussions.

However, the Workshop discussions revealed that the State representatives, with but a few years experience on the firing line exposed to the practical realities of an aroused public and responsive State legislative action, had advanced to a stage of sophistication that rendered nearly primitive the 1967 suggested act--and even the 1970 Clean Air Act amendments which just a few months ago had been considered as a significant legislative forward step. As a consequence, Workshop discussions were lively--at times, impassioned. What originally had seemed like an inordinate allocation of Workshop time turned out to be barely adequate to cover the assigned topic.

Report presented by William H. Megonnell, Environmental Protection Agency

While it was the unanimous recommendation of the Air Quality Workshop that the 1967 Suggested State Air Pollution Control Act, and the amendments that were approved in June 1971, be included for revision on the agenda of the Council of State Governments' Committee on Suggested State Legislation, the Workshop participants also expressed the view that the draft discussion paper which was distributed at this Symposium not be distributed to States, lest it be interpreted as an "ideal" State air pollution control law.

A principal objection to the 1967 Council of State Governments' Suggested State Air Pollution Control Act and its amendments, and to the draft used in the Workshop, is that they appear to be aimed only at satisfying requirements of the Federal Clean Air Act, as amended. As such, they tend to represent only minimum requirements, rather than truly a "Model Act"-- as Suggested State Legislation is commonly, but inappropriately regarded.

Among the specific suggestions advanced at the Workshop are the following, which are recommended for consideration in the preparation of a revised version of the State Air Pollution Control Act for submission to the Committee on Suggested State Legislation.

1. To maximize administrative flexibility, broad general enabling authority is preferable to narrowly constructed provisions, which more properly should be included in regulations.
2. A declaration-of-policy statement should be added which specifies that minimum practicable degradation of air quality shall be obtained by the application to all sources of state-of-the-art technology, without the necessity of the State agency's having to demonstrate that ambient air quality standards will, or may, be exceeded.
3. Include within the definition of "persons" subject to provisions of the Act, departments, agencies and instrumentalities of the executive, legislative and judicial branches of the Federal Government.

4. Optional organizational arrangements should be specified for policy formulation, rule making and enforcement; but special care should be taken to insure that air pollution control responsibility is vested in those who are free of conflict between public and proprietary interests, and are best capable of making impartial and objective judgments. Advisory committees should not be created by legislative enactment, but authority should be provided therein for agency appointment of advisory committees deemed necessary or desirable by such agency to carry out the purposes of the Act.

5. A comprehensive permit system should be included, and the optional limited-scope permit systems which were included in the draft discussion paper should be deleted.

6. Inspection-warrant authority should be broadened so that no burden beyond minimum constitutional requirements is placed on the State agency; application for a warrant should be an ex parte proceeding, without notification to the source.

7. "Streamlined" procedures should be considered for State and local enforcement at small multitudinous sources, and the intent of concurrent and coextensive State and local enforcement authority over individual sources should be clarified. An option should be provided whereby enforcement proceedings may be instituted either by the State agency or the Attorney General; criminal as well as civil penalties should be specified, with graduated penalties for habitual violators; recovery of damages to the public, including court costs and attorneys' fees, should be provided, as should probation for violators, including corporations.

8. Emergency procedures should be revised to include authority which requires sources to prepare in advance, and to submit to the State agency for approval, pollution curtailment plans to become applicable during emergency conditions.

9. When a variance is based only upon a consideration of the time needed to effectuate control, a performance bond should be required or other authority should be provided to assure conformance with the conditions of the variance.

10. Consideration should be given to the inclusion of a provision permitting compromise settlement for civil penalty, with the possibility of partial rebate for prompt and effective compliance.

11. State administrative procedures acts or air pollution control laws should be amended to require public notice of all proposed or final actions by the State agency.

12. Consideration should be given to inclusion of a citizens-suit provision, with safeguards to preclude frivolous and harrassment actions.

13. Since ample remedy exists in law for unauthorized release of confidential information, no penalty provision should be provided in the air pollution control act for unauthorized disclosure.

14. Finally, reservations about, and objections to, the motor vehicle pollution control section were so serious that total reconsideration and redrafting were recommended. In particular, State authority to establish emission standards for in-use vehicles should be clarified, including authority to deny registration, certificate of inspection or operation of vehicles not complying with emission limits. In addition to specific penalties for violation of motor vehicle regulations, the other penalties specified in the air pollution control act also should be applicable.

I trust I have faithfully and accurately reported the opinions and recommendations of the participants in the Workshop on Air Quality. I am certain you will agree that it has been a lively session with highly qualified and experienced people. I want publicly to acknowledge their cooperation and unreserved participation, and to congratulate the program committee for its selection of the members of the Air Quality Workshop.

NATIONAL SYMPOSIUM ON STATE ENVIRONMENTAL LEGISLATION

March 15-18, 1972

Workshop Report
on
SOLID WASTE

The Solid Waste Workshop met on the related problems of abandoned automobiles and final disposal of automobiles. It makes the following recommendations, and also, at State urging, makes some general recommendations on the need for broader solid waste management statutes.

It makes a background finding that there is a need for each State to solve the problem of abandoned cars on public and private property, and that systems of collection and final disposal are necessary both for abandoned cars and fully depreciated cars disposed of by owners and dealers. After considered discussion, the Workshop found that geographical and population difference might necessitate different technical approaches to the actual scrapping or disposition in the different States or even parts of States, but also found that a workable title registration and identification system was necessary in any State. This is the only way ownership of abandoned cars can be identified and responsibility assessed.

Thus, the statutes involved in any State should include: (a) title and registration; (b) public nuisance; (c) impoundment and sale; (d) environment and land use; and (e) solid waste disposal.

As to the first three, the Workshop made specific recommendations for model State legislation. As to the remaining two, the Workshop concluded that they are part of the overall problem of solid waste disposal. Accordingly, the Workshop has made recommendations for their discussion at the next meeting of the Committee on Suggested State Legislation of the Council of State Governments.

Report presented by the Honorable William L. Saltonstall,
State Senator, Massachusetts

The statutory definition of public nuisance should be comprehensive enough to cover cars abandoned on public property and should state the precise point in time when cars would be classified as abandoned property.

After time to establish abandonment has expired, effort should be made by law enforcement authorities, State, county, or local to locate the owner by searching State records, tagging, telephone and certified mail. Tag, phone call and letter should notify the owner of responsibilities and rights.

On private property, abandoned cars should be included in public nuisance statutes if visible from public property or other private property.

1. A penalty should be provided.
2. Impoundment and removal would be undertaken with costs charged to the owner.
3. If owner is keeping apparently abandoned cars for rebuilding, he would be required to prove that such was the purpose.

A. Abandonment

1. Abandonment should be misdemeanor subject to a fine.
2. Incentives can be provided to discourage abandonment -- several were discussed as alternatives:

(a) Disposal bond system proposed in New York-- deposit required when car first purchased new or upon entry into State as a used car. Deposit to be refunded when car finally scrapped or moved out of State. This system would provide the State with a large fund with the interest on the fund used to finance the disposal of abandoned vehicles.

(b) Bounty to scrap processor, payable for each car scrapped. This incentive would be particularly helpful if conditions make scrapping uneconomic.

(c) State or local government could subsidize collection and transportation.

3. State or local government could provide disposal.

4. Education would be necessary for public understanding.

After established waiting time and notification procedures have been followed, car would be impounded if not moved by owner. (Note - major owner location problem exists where there are large migratory populations or where there is insufficient statutory incentive to record changes of ownership).

A. Distinction must be made between autos of value and those of little value as delineated below:

- (1) Wrecked or inoperable
- (2) 7 years old
- (3) Cars of less than \$100 retail value

High value cars may be kept "X" weeks while effort is made to locate owner by record search, advertisement, phone and certified mail. The owner would be required to pay charges. Car may be auctioned after time expired. Title change would be made at auction.

Low value car could be scrapped after short holding period. State title records would be marked if possible. Owner would be required to pay charges upon his identification and location.

B. Titling

1. The Workshop finds that greater uniformity of titling procedures would expedite understanding of this disposal problem. This should be a separate statute. For example, in some States the plates belong to the owner and leave the car on its sale. In other States, plates remain with the car if sold. This procedure makes owner identification more difficult.

2. Detitling should be simplified for low value vehicles -- often identification is difficult. Some States require owner to re-register car annually or show why he did not and tax unregistered cars. Other States have large private farms or forests where an unregistered car or truck may never leave private property. These require different treatment.

3. Office administrative procedures should be effective for identifying cars. Vehicle identification number, plate number and inspection sticker number should be recorded.

C. Disposal

Environmental considerations should be covered in locating, regulating, and screening auto scrapyards, dismantlers, parts dealers, balers and shredders.

Ultimate goal is return of auto to scrap steel market.

1. Shredded is best.
2. Baled or bundled next best.
3. Burial is acceptable only in lieu of economic unfeasibility of above.

Scrapyard regulation should provide for limit on accumulation of cars by acreage and screening requirements in land use policy or zoning laws. In distant locations, government may have to handle final disposal.

D. Financing

Financing may come from an annual fee (Connecticut has just enacted one) or a disposal bond (New York plan). Problem should be solved as part of State's fund system. May be placed in a special fund, general fund or highway fund as State's accounting system may best provide. Goal should be that each car finances its own disposition with or without State assistance.

The Workshop found that solid waste has become one of the most important and difficult problems for State and local government. It recommends that suggested State legislation be developed for the administration of a statewide solid waste program and suggests that this be taken up at the next session of the Committee on Suggested State Legislation of the Council of State Governments. An outline of the provisions which the suggested law should cover follows:

RECOMMENDED PROVISIONS FOR SUGGESTED STATE
SOLID WASTE MANAGEMENT LAW

I. Required Provisions

A. Standards and Enforcement

A State solid waste law should establish solid waste performance standards (either in the law or through regulations) which are designed to assure compliance with other environmental standards and provide for effective enforcement of solid waste operators to insure that the standards are met. Procedures for prosecuting violators should be defined.

Issues:

- Who sets standards and who enforces (State, county, regional authorities, etc.) -- e.g. what are the proper roles and responsibilities of (a) the State, and (b) the local jurisdiction, and what is the relationship between the two?
- What areas of the solid waste system require regulations (standards and enforcement): disposal, collection, transfer, processing and recovery?
- How should the enforcement be carried out (e.g. through revocable permits, injunctions against violators, State takeover of substandard operations on a temporary basis)?

B. Financing

State law should facilitate the generation of sufficient revenues at the operating level to cover the entire operating and capital costs of an environmentally acceptable system.

Issues:

- Should a State allow new or special forms of taxation for solid wastes? Has the Federal government preempted such new fields of taxation?
- Should a State require localities to adopt user charges or similar arrangements to assure adequate financing of solid wastes systems?
- Should a State provide financial assistance, or should operating and capital costs be generated at the local level?

C. Institutions

State laws should (1) provide incentives for the development of multi-jurisdictional solid waste management authorities to achieve economy of scale savings, and (2) enable (encourage) localities to enter into long-term agreements with private or other public agencies where feasible.

Issues:

- Should a State be able to force a jurisdiction to participate in regionalized operations?
- How does one insure efficiency and proper rate levels?
- Should the number of public or private organizations be restricted and, if so, how should their performance and rates be regulated?

D. Planning

A State law should require the development and implementation of comprehensive solid waste management plans at the State and political subdivision level.

Issue:

- How should planning by the political subdivisions be encouraged, and what action should the State take if they do not develop and implement a plan?

E. Monitoring

A State law should provide for the collection of information for effecting planning, enforcement, and technical assistance.

II. Optional Provisions

States may want to consider additional provisions and responsibilities depending upon their own unique situations and views, including:

- Training programs for various skill levels.
- Certification of solid waste operators and personnel.
- Establishment of a State Solid Waste Advisory Council.
- Research and development activities.
- Technical Assistance programs.
- Solid Waste Management Facility siting.
- Public Education programs.

NATIONAL SYMPOSIUM ON STATE ENVIRONMENTAL LEGISLATION

March 15-18, 1972

Workshop Report
on
NOISE

This report summarizes the major results of the discussions of the Noise Workshop.

Elements of Proposed State Noise Legislation

Recommended Structural Aspects of State
Enabling Legislation

1. The legislature should adopt enabling legislation to establish within an appropriate State agency with environmental quality control functions, the noise pollution control function.
2. The structure of the State agency should follow these guidelines:
 - A. Appointment by the governor of an administrator for the agency who would be a full time, paid, State employee.
 - B. Appointment by the governor of a commission of citizens to serve specified terms, upon a basis and subject to adequate provision to ensure against conflict of interest.
 - C. Commission authority would include the adoption and revision of standards, and the conduct of hearings on violations.
 - D. The agency administrator would propose standards according to criteria established by the legislature in the enabling legislation, for consideration and adoption by the Commission.
 - E. Commission adoption of standards would follow public hearings on the proposed standards.

Report presented by Raymond P. Underwood, Assistant
Attorney General, Oregon

F. Following the commission' adoption of standards, the administrator would be responsible for their enforcement. He would receive citizen complaints and also investigate complaints on his own initiative. He should be empowered to issue citations and require compliance with the standards. He should be authorized to accept voluntary compliance with his citation and to assess civil fines and penalties. If his citations are ignored, his alternatives may be: (1) criminal prosecution in State court or (2) civil hearings before the commission. In the latter instance, the commission would be authorized to hold an administrative hearing (or delegate to a hearing officer for recommended findings) to determine existence of the violation and to access appropriate fines.

G. The administrator would be authorized to file at any time, a criminal complaint against an alleged violator.

H. The violator would be entitled to judicial review of a commission's order, and to appeal to the courts from a criminal conviction.

3. The enabling legislation should include policy guidelines to be followed by the commission in adopting noise pollution regulations.

4. Delegation to local government for local enforcement:

A. The administrator should be empowered to certify a local governmental entity to carry out the State enforcement responsibilities. The statute should provide criteria for such certification, including adherence to State standards equal to those of the State agency. The administrator would have the right to revoke the certification upon failure to meet this criteria. The local agency could establish its own violation hearing board or prosecute in local courts. In certain matters allowed by law or State standard, this local authority could adopt more stringent standards, and the State standards should then be treated as minimum standards.

Scope of Legislation

The proposed illustrative bill should encompass at least the following areas:

1. Occupational noise exposure -- The legislation should provide for coordination, as appropriate, of all noise regulations with the provisions of State and Federal occupational hearing conservation regulations.
2. National environmental impact statements -- The legislation should provide for official review by the agency designated to administer State noise programs, of all environmental impact statements for Federal activities within the State.
3. State environmental impact statements -- The legislation should provide for submission and review of environmental impact statements, if authorized by State law, for State and local projects which could affect, either adversely or beneficially, the noise environment.
4. Land use and zoning -- The legislation should provide for the noise control agency's functions in relation to comprehensive land use planning and zoning throughout the State. This should include provision for coordination with other State and local agencies whose projects could affect the noise environment.
5. Transportation -- The legislation should provide, where not Federally preempted, for the issuance and enforcement of noise emission standards for transportation systems, and for operational restrictions on the noise of air, water, rail and road transportation systems.
6. Building noise attenuation requirements -- The legislation should provide for the State noise control agency's functions in relation to the requirement, in building codes, of noise attenuation performance standards for buildings. Authority should be provided with respect to both (a) protection between units in multifamily dwellings and (b) noise attenuation of building exterior shells in regions where high outdoor ambient noise levels exist.

7. Source emission standards -- The legislation should provide, where not Federally preempted, for noise emission standards for new and used products (e.g., construction equipment, air-conditioning equipment, engine-powered equipment, and recreational vehicles, etc.) and should provide for means for regulating the noise emission of products throughout their use life.

8. Ambient noise standards -- The legislation should provide for the issuance of ambient noise standards for use by the State and by the municipalities. These should be minimum standards subject to supercession by more protective standards adopted by local government.

9. "Truth in Selling" requirements -- The legislation should include provisions for "truth in selling" regarding the noise characteristics of products and real property sold within the State.

10. Training and technical assistance -- The legislation should provide means for the State to provide training and technical assistance to the counties and municipalities in furtherance of their noise abatement and control program.

11. Information dissemination -- The legislation should provide means for disseminating information to the public regarding noise, its effects and control.

Major Points of Concern

The following areas were discussed at some length as items which require careful consideration in the implementation of noise abatement and control programs:

1. Federal preemption -- It is very clear that the primary responsibility for noise abatement resides at the State level. However, it is not yet completely clear to what extent Federal noise emission regulations, which may be issued under anticipated legislation (to avoid a proliferation of conflicting State and local regulation of products shipped in interstate commerce) will preempt State authority.

2. Resource requirements -- There is a strong need for comprehensive studies to determine the resources (funds, manpower, equipment and training) to develop and administer a valid noise abatement and control program.

3. Socio-Economic impact -- In implementing noise abatement programs and setting noise control standards, careful consideration must be given to technological feasibility and economic practicality, including the impact on employment and the cost of living, particularly for low-income families.

Recommendations for Future Action

1. There should be a continuing working relationship between the Council of State Governments and the Environmental Protection Agency to ensure that State and Federal noise abatement programs complement one another in a reasoned manner so as to take full advantage of the authorities and functional capabilities at all levels of government.

2. The State should establish broad, comprehensive programs of noise prevention, abatement and control, which enable them to effectively address the large variety of noise problems which can, and should, be handled at the State level. These programs should fully utilize the cooperation and powers of local government.

3. Illustrative legislation should be centrally developed to assist State and local governments. The initial step should be development of a suggested state noise bill (enabling legislation).

The Council of State Governments, with assistance from EPA, and in consultation with representatives of local government, and with technical subject matter interest groups (such as the National Conference of States on Building Codes and Standards), should promptly develop, approve, and publish such suggested State legislation.

The Council's illustrative State noise bill should become available in approximately one year.

NATIONAL SYMPOSIUM ON STATE ENVIRONMENTAL LEGISLATION

March 15-18, 1972

Workshop Report on STATE ENVIRONMENTAL POLICY ACT

The discussion in the Workshop focused on problems of drafting and implementing a State Environmental Policy Act (SEPA). Using the National Environmental Policy Act (NEPA) as an example, and drawing on the experience of States which had passed similar Acts,* a number of issues were raised for consideration by any State proposing to adopt an Environmental Policy Act. These issues were presented in terms of ways in which a State Act might profitably differ from the Federal Act in order to reflect either differences between State and Federal Governments or the results of experience to date under the National Act.

Listed below are the major issues raised for consideration, together with a brief report of the Workshop discussion on each point. In many cases, the considerations on both sides of an issue were explored without reaching a definite conclusion. In other cases, some form of consensus emerged from the discussion. The following summarizes these results.

Issues Reflecting State-Federal Differences

1. Should the SEPA include the broad declaration of policy contained in Section 101 of NEPA?

It was generally agreed that a broad declaration of environmental policy was desirable. The real problem, however, was thought to be one of relating this broad declaration to other specific provisions of law for implementing the policy.

- * California, Washington, Montana, Wisconsin, North Carolina, Puerto Rico; partial requirements in Delaware and Virginia (requirements by Governor's order in Hawaii and Missouri). Legislation pending in Illinois, Connecticut, Massachusetts, Minnesota and Colorado.

Report presented by Timothy Atkeson, Council on Environmental Quality

An Act which had only a policy declaration, without an "action-forcing" mechanism would probably be ineffective. At the same time in adopting an "action-forcing" mechanism, one should be aware that the policy declaration will affect the obligations which such a mechanism places on governmental units. An intermediate proposal would be to adopt Section 102(1) of NEPA (i.e. administer all authorities in accord with the policy of this Act) without Section 102(2)(c) impact statement requirement.

2. Should the SEPA include a definition of "environment?"

No views were expressed concerning the desirability or the need to define "environment" in the Act itself. Some members of the Workshop indicated, however, that a definition of this term was important at some point in implementing an Environmental Policy Act. One State has developed a list of environmental indices to help define the term. The general problem posed by attempts at definition is the problem of the relationship between "environmental" concerns on the one hand, and more traditional social, economic, and technical concerns on the other. An excessively broad definition of the "environment" would tend to obliterate the distinction among these different concerns, while an overly narrow definition would eliminate legitimate factors from an environmental assessment of a project.

3. Is the range of State concerns likely to be broader or narrower than the range of concerns expressed in Section 101(b)(1)-(6) of NEPA?

It was not suggested that the range of environmental concerns would differ for States. It was pointed out that the factors listed in § 101(b)(1)-(6) would be viewed as partially defining the term "environment," thus leading to the problems discussed above. The effect of an action on population patterns was discussed as an example of the range of considerations which probably should be included in an "environmental" analysis.

4. Should express provision be made with respect to public availability of information or public hearings?

It was agreed that some provision should be made for public availability of information and public comment.

5. Is the requirement in Section 102 of NEPA that agencies use a "systematic, interdisciplinary approach" a realistic one when applied to State agencies?

In theory, this requirement is unobjectionable as an expression of the thoroughness with which agency actions should be evaluated. In practice, however, there may be a real problem in securing an adequate budget and staff to make the requirement realistic in every governmental agency. A number of possible solutions to this problem were discussed, including the possibility of using outside contractors, the possibility of drawing on existing expertise in other agencies, and the possibility of centralizing the environmental analysis in a single agency. It was suggested that States might wish to supplement the range of expert agencies contacted for comment by including relevant Federal agencies.

6. Are there State agency actions which do not have Federal counterparts and which might present unanticipated problems in complying with the impact statement requirement?

Zoning actions and similar land-use decisions do not seem to have a Federal counterpart. Applying an impact statement requirement to all local zoning board decisions, for example, might prove excessively burdensome. Some States may also face problems in applying an impact statement requirement to both State and local agencies (although no such problems have apparently been encountered in the case of California). States adopting an Environmental Policy Act should be aware of peculiar local-State relationships under existing constitutions or State laws which may need to be taken into account.

7. Is there any reason why the section 102(2)(C) procedures required under NEPA should not be used on both the Federal and State levels?

Although this question was not explicitly answered, a number of alternatives to the impact statement process were discussed, including the possibility of replacing the impact statement process requirement with a central agency having environmental veto power (discussed further below), and the possibility of requiring impact statements only when requested by specified agencies. If the decision is made to follow the impact statement procedure, the balance of consideration would favor a State practice similar to the Federal practice.

Issues Reflecting Experience to Date with Environmental Impact Statements under NEPA

1. What provisions should a State Act include in order to avoid duplication on a project which represents both Federal and State action?

It was generally agreed that duplication should be avoided where both Federal and State agencies are involved in the same project. It is proposed under the California Act, for example, that a guideline be issued to avoid the requirement of two impact statements.

In the course of discussion, other problems were raised in connection with State-Federal involvement in the same projects. It was suggested that thought should be given to which agency -- State or Federal -- was the most suitable one to prepare an impact statement in cases where the Federal involvement was perhaps less than that of the State. It was also urged that thought be given to the problem of projects financed through several Federal agencies (or financed as a result of revenue sharing) in which case, in the absence of specifically defined State responsibility, there may be no environmental assessment at all. Both of these possibilities seemed to indicate a possible need for increased State responsibility in preparing environmental analyses. In addition, as State environmental impact statement procedures are evolved, consideration might be given to finding ways to permit these procedures to serve as compliance with NEPA.

2. Are there major State agency actions which should not be subject to the impact statement requirements (e.g., environmental, protective regulatory actions taken by an agency similar to the EPA)?

Two types of actions were suggested as possible candidates for exemption from an impact statement requirement: (1) environmental protective regulatory activities; and (2) actions which have only "beneficial" environmental effects.

In opposition to these suggestions, it was pointed out: (1) that both types of activities may have secondary detrimental effects which should be explored in an impact statement; (2) that actions which protect the environment may nevertheless not protect enough; and (3) that decisions as to what is or is not "beneficial" may themselves be suspect.

In favor of the suggested exemptions, it was pointed out that a State which faces difficulties in enacting a completely comprehensive Act, may want to attack the major problems first. These are the problems of "developmental" as opposed to "environmental" agencies, and of "adverse" as opposed to "beneficial" environmental effects.

3. Should a SEPA contain provisions explaining how the Act should be applied to actions commenced prior to passage of the Act?

It was generally agreed that a State Act should explicitly address the "retroactivity" problem in order to avoid later confusion. In favor of applying an Act to ongoing programs and uncompleted projects already under way, the Federal experience was cited which requires impact statements for remaining major actions, while permitting prior commitments to be taken into account in balancing the environmental costs against the economic and technical gains. In favor of applying an Act only to new projects, the possibility of avoiding confusion and delay of projects already under way was stressed. In choosing among these positions it was suggested that a State should consider the amount of "backlog" projects which will be affected by retroactive application. If the State limits the availability of funds to a given fiscal year, this should also be considered in approaching a "backlog" problem.

4. Should a SEPA describe the standard of judicial review to be applied under the Act? What standard should courts apply?

A variety of citizen suit provisions were discussed as were various standards of judicial review of agency compliance with a State environmental policy act. It was noted that States which had adopted broad citizen suit provisions have not experienced the flood of suits which had been forecast. No consensus emerged, however, concerning the desirability of such provisions. With respect to standards of judicial review, most members seemed to agree that agency decisions should not be subject to de novo judicial review, but instead more traditional, limited standards of review should apply. States proposing an Environmental Policy Act should consider whether existing standards of judicial review of administrative action would be applied, or whether explicit standards of review need to be spelled out in the Act.

5. Should an impact statement requirement be extended beyond State agency actions to environmentally significant private actions?

No consensus emerged for extending an impact statement requirement beyond actions taken by governmental units. The general problem was raised of the extent to which a governmental "handle" (i.e. permit, license, etc.) on an otherwise private action should justify or permit complete environmental regulation of the activity. A number of instances were cited in which such authority had been exercised.

Issues Pertaining to the Administration of SEPA

1. Should a State Act create a central agency to prepare and/or evaluate impact statements?

The advantage of a central agency to prepare or evaluate impact statements lies in the possibility of avoiding duplication of effort and of possibly insuring more objective environmental appraisals. The advantage of requiring each agency to prepare the statement lies in the possibility that this will increase the environmental consciousness of the agency. Which choice is preferable is probably best left to the decision of individual States.

2. Where should the responsibility for implementation of the Act and issuance of guidelines be located?

It was generally agreed that some check in the form of guidelines or the ability to require impact statements should be located outside the action agency. The Governor's Office appeared to be a suitable place for locating the responsibility for issuing guidelines. The possibility of creating a central agency with "veto" power was discussed, without reaching a conclusion.

NATIONAL SYMPOSIUM ON STATE ENVIRONMENTAL LEGISLATION

March 15-18, 1972

Workshop Report on POWER PLANT SITING

This report is intended to satisfy three objectives with respect to the charge to the Power Plant Siting (PPS) Workshop. That initial charge was to assess the merits of placing suggested State power plant siting legislation on the agenda of the Committee on Suggested State Legislation of the Council of State Governments.

Relationship of PPS to Other National, State and Regional Goals

As determined by the PPS Workshop participants, the first objective was to place PPS in perspective with overall National, State and regional goals. An identification of linkages, direct and indirect, between PPS and the broader framework of a comprehensive social, biologic and economic environmental system helped evaluate the priority of PPS.

While participants admit to some degree of bias, the question initially deliberated was: "Is PPS of such sufficient importance as a separate function that specific suggested legislation is needed?"

Much of the discussion on this question revolved around PPS's relationship with comprehensive land use management programs. It was determined that while PPS is an alternative, competing use of the land and water resource, the allocation of land based upon highest use and social values should be determined outside the site evaluation process. The primary responsibility of PPS should be to evaluate site characteristics and environmental impact, thereby determining site suitability for energy generating and transmitting purposes. Final determination respecting ultimate

Report presented by James Goodwin, Executive Director,
Southern Interstate Nuclear Board

land use at the site would be made, hopefully prior to an extensive site evaluation, by the body responsible for land use management in the area.

The Workshop emphasizes that it is not suggesting the possibility of divorcing land use considerations from those of PPS. The elements of both are so intertwined as to require their close coordination. The layering of one on the other should give way to an integrated approach at some future time.

Separating the function of site evaluation and certification from that of assessing priorities or deciding among competing alternative uses permitted the Workshop to examine that function more imminently.

The first objective of placing PPS in its proper perspective had been met.

Need for Suggested Legislation

The second objective was to determine whether PPS suggested legislation is needed and to thus satisfy the original charge to the Workshop. Several salient facts emerging from the discussion within the Workshop are indicative of State and Federal interest:

1. Most States have a history of interest in PPS as an identifiable and separate function of government.
2. PPS legislation currently before Congress would not only encourage but require State action in this area.
3. Multiple permits and PPS requirements of diverse governmental agencies at both the State and Federal level represent an inefficient waste of resources and time and, therefore, some additional social costs.
4. All identifiable alternatives to State PPS legislation have social, political, economic, or administrative limitations.

After considering these points, the Workshop unanimously concluded that it would strongly urge the Council of State Governments to place the development of suggested PPS legislation in a prominent place on the agenda of the next meeting of the Committee on Suggested State Legislation.

Possible Approaches to a Model Law

The Workshop decided to expand its charge to meet the third objective of this report. That objective is to suggest relevant approaches to suggested PPS legislation which would serve as a guide to its drafters.

The Workshop began this phase of its work by studying the experience of two States -- Washington and Maryland -- with different approaches to PPS. This case study was augmented by other pertinent State experience reported by participants. It soon became apparent that any suggested legislation should retain flexibility to meet individual State needs and requirements.

However, a consensus was reached regarding universal elements which could be incorporated in any act and remain consistent with existing State and Federal law. Identification of such elements for Workshop discussion was requested from participants. Those suggestions were classified and grouped in an agenda containing seven major items for further discussion. A copy of the discussion and "thinking" agenda is attached to this report.

The first item has already been covered in discussion above concerning planning and management.

The Siting Authority

The second item concerned the siting authority itself. Discussion resulted in the following observations:

1. It was agreed that source of the siting authority and its powers should be statutory. Interim committees or councils could not adequately serve the purpose because a legal authority is necessary. An interim committee could serve a useful purpose if its charge was the drafting of PPS legislation for introduction by a certain date.

2. Functions of a PPS authority must include long-range planning, early site review, and certification. Inclusion of these functions would meet any foreseeable State responsibilities under proposed Federal legislation. Early review should include all State-supported research necessary for site evaluation, including field experiments.
3. The concept of "one stop shopping" must be adhered to, although this could be accomplished by a formal coordinative mechanism including a group of agencies.
4. No veto power should be in the system to impair activities of the siting authority. Adequate provisions for review and public participation will be built into the system administratively. The responsibility of the PPS authority would culminate in the site's certification which would depend upon its meeting all environmental standards.
5. Judicial review of any decision of the PPS authority should be provided in accordance with State administrative procedure requirements.

The Siting Mechanism

The third discussion item related to the actual mechanism under which the PPS authority would operate. Under this item it was suggested that:

1. The time frame for certification suggested in proposed Federal legislation was attainable and reasonable for State PPS. This time frame includes completion of a site evaluation 5 years prior to the start of construction and a review of plant design and the location of transmission lines 2 years before construction. Exceptions would be expected during the start-up period of a program.
2. All private and public utilities should be required to disclose their site requirements for some time in the future. This would help immeasurably to fulfill the planning function.

3. The utilities should be encouraged to identify future proposed sites and determine their own priorities among them. Both the State and industry should look for and identify potential sites.
4. Any State mechanism for PPS must ensure that the public is kept fully informed of all PPS activities by the State. This could include such things as a State information and education center within the PPS authority where full disclosure could be made, information forums for public suggestions or critiques during the PPS process, and public hearings after sufficient information had been obtained and analyzed to make such hearings useful to the State. The latter device might be used at the five and two year review intervals, for example. The actual mechanism should be determined by the State in accordance with usual procedures.
5. The PPS authority should have the power of eminent domain.
6. An assessment of projected need for generating capacity could be made by utilities, but their criteria and formulae should be disclosed for State review and evaluation.

Financing the PPS Program

The fourth agenda item recognized the need for financing any program to be established by the State. This agenda item encouraged some heated discussions within the Workshop. The discussion recognized that, since State needs and sources of financing are sensitive to many factors, this section of the suggested legislation should grant a large amount of flexibility to the State. Possible sources of funding include (a) surcharge on electric power generation at the generator; (b) filing fees when the request for site certification is made; (c) general appropriations by the State legislature; and (d) any combination of the above. If the PPS mechanism includes pre-purchase of approved sites, financing needs would vary from those associated with a strict certification program. The Workshop agreed that the financing should ensure long-term funds to cover long-term studies necessary at the site.

Long Term vs. Short-Term Siting

The fifth agenda item related to long vs. short-term siting problems. The problem of minimizing costs of a PPS program in the face of 10 or 20 years of pre-planning and studies is a key one. While each State should decide this for itself, perhaps reconnaissance level studies at the 10 or 20 year pre-planning point (as opposed to later feasibility studies for 5 and 2 year studies) would permit the identification and study of the more important siting problems at specific sites. It further was suggested that the States may wish to preserve the integrity of future sites by other methods than purchase in fee simple. However, various methods for precluding development on land in private ownership have their own limitations or attractions, depending upon each State's experience.

Other Agenda Items

The remaining items on the agenda were combined in the discussion, the thrust of which was to commend regional coordination and cooperation in PPS activities. Interstate approaches to such questions as the measurement of regional environmental impact, regional siting criteria, and regional approaches to meet needs of energy conservation alternatives and technology should be examined as possible solutions to some very important problems of State and interstate concern.

The participants of the PPS workshop enjoyed their work on this crucial State concern. This Symposium has expanded their concepts of State-Federal cooperation and interstate need. They are honored to have been asked to participate.

POWER PLANT SITING AGENDA

1. Power Plant Siting, Land Use Planning and Zoning
(Land Use, Recreation and Aesthetics)
2. The Siting Authority
 - a. Who should designate the authority?
 - b. What is it?
 - c. Role of State and Federal authorities?
 - d. One stop shopping at the State level?
 - e. Should a veto be in the system? Where? When? By whom?
 - f. Federal review of State siting decisions.
 - g. Judicial review.
3. The Mechanism
 - a. Time frame for certification (when to start and finish).
 - b. Role of industry in pre-selection.
 - c. Public hearings (when, what form?)
 - d. Eminent domain.
 - e. Role of State agencies in the siting process including the mechanism for coordination.
 - f. Will the need for capacity be answered by Industry, the State, by formula, or is this a real question?
4. Financing a Power Plant Siting Program
5. Is there a difference between short and long term siting? What?
 - a. What about preservation of future sites by other mechanisms than purchase in fee simple?
6. The role of Research and Development in Power Plant Siting
 - a. Energy alternatives.
 - b. Energy conservation.
 - c. Plant technology.
7. Interstate Cooperation and Coordination

NATIONAL SYMPOSIUM ON STATE ENVIRONMENTAL LEGISLATION

March 15-18, 1972

Workshop Report
on
LAND USE

The Workshop did not consider or formulate a draft of suggested State legislation, but it did review the following background materials:

- A discussion paper on State land use policy.
- S. 992, the proposed National Land Use Policy Act.
- The extensive study, The Quiet Revolution in Land Use Control by Fred Bosselman and David Callies.

The Workshop discussed the general objectives of State land use policy, and then considered issues in and the responses of particular States to such problems as:

1. State organization for land use planning and regulatory action.
2. Control or development of critical land areas (flood plains, wetlands, shore lands).
3. Control of land around key facilities such as airports, highway interchanges, and interstate highways.
4. Impact areas, such as power plant sites.
5. Large-scale developments.

Consensus was reached on the following major points:

1. Environmental problems are so inter-related in nature -- both within States and across State lines -- that each State must assume over-all control of land use within its borders and cooperate with its neighbors and regions.

Report prepared by Robert H. Marden, Director of Office
Planning and Program Coordination, Office of the
Governor, Massachusetts

2. The States are the only level of government which can pull together the many existing and proposed Federal planning, development, and control programs. This is particularly true in view of the imminent enactment of major amendments to the Federal Water Pollution Control Act.

3. The Workshop endorsed the philosophy of the two major bills on National Land Use Policy -- S. 992 and S. 632. In this regard:

a. The Workshop concluded that the organization, history, and problems are so different from one State to another that there should be no effort to impose any single arrangement.

b. The Workshop supports the approach in both bills specifying what each State should be able to do in planning and controlling land use but giving options to each State as to how those goals will be attained.

c. The Workshop is convinced of the urgent need for all States to act in this field. Therefore, the Workshop specifically endorses the proposed graduated penalties against those States which fail to act within three years.

4. The Workshop urges States to take immediate legislative action to deal with particularly critical areas or problems, while at the same time starting the longer and more complicated process of overall land use planning.

5. The Workshop concludes that the problem of land planning, environmental planning (including erosion and sediment control), population, housing, new communities, rural revival, economic development and others are so inter-related that they must be tied together at the State level -- they can no longer go their separate ways. Similarly, Federal, State and local funds for such planning should be utilized in a coordinated fashion for the maximum benefit.

6. The Workshop particularly urges the Federal agencies which control Federal public lands to closely coordinate their activities with State and sub-State land use planning.

7. The Workshop commends the Council of State Governments, CEQ, the Environmental Protection Agency, and the Department of the Interior for organizing this Symposium. It recommends that another conference be held next year to review further Federal and State experience and any new State and Federal legislation in this field.

NATIONAL SYMPOSIUM ON STATE ENVIRONMENTAL LEGISLATION

March 15-18, 1972

Workshop Report on HISTORIC PRESERVATION

The Workshop on Historic Preservation has completed its assignment and has adopted a set of guidelines for legislation to protect the significant man-made elements of the environment. Our able group of Federal officials and State representatives has worked industriously revising draft guidelines which were prepared for the Workshop by the Advisory Council on Historic Preservation. The Council was assisted in the development of this draft by the National Trust for Historic Preservation, by Federal agencies, and by several State Historic Preservation Liaison Officers.

Our Workshop reached the conclusion that every State should have centralized authority for conducting the State's program of preserving its historic, architectural, archaeological, and cultural resources. As with most features of the guidelines, we found that there are a number of ways in which this power could be exercised. One State may wish to have a department of the State government headed by a director. Another State may choose to use a board or commission. No matter what approach is taken, we strongly urge that there be a central authority with primary responsibility for historic preservation. We emphasize throughout the matter of professional competence. We recognize the role of private citizens and the contribution of non-governmental organizations. We have stated the view that a professional approach to historic preservation is fundamental to an adequate State program and have recommended that the State officials responsible for this program have the assistance of private citizens and professional advisors. We recognize the effectiveness of an interagency-private citizen relationship at the State level following the pattern of the President's Advisory Council on Historic Preservation.

Report presented by Nancy K. Shipley, Advisory Council
on Historic Preservation

To encourage and facilitate the involvement of the private sector, we have proposed the establishment or the designation of a non-governmental organization to coordinate the statewide private citizen effort.

Because much of the need for historic preservation is centralized within urban areas, the older neighborhoods and the historic districts of our cities, we have recommended legislation authorizing local preservation programs. Our guidelines also include legislation to protect the State's archaeological resources, both surface and underwater.

Tax incentive legislation was not considered. However, we suggest that existing State tax law be studied for the ways and means of providing assistance to the State's preservation program.

The final section of the guidelines proposes that States make it mandatory that all agencies manage State properties within the intent of the proposed legislation.

As a final action, our Workshop took note of the broad and visionary manner in which the Council of State Governments and other Symposium leaders approached the environmental legislation question. The legislative pattern was set by Congress in the National Environmental Policy Act by its placement of the man-made and the natural elements of the environment on equal footing. It is inevitable that States will now follow suit, and our Workshop has considered its assignment both a challenge and an opportunity toward bringing this about. We hope these guidelines will be useful to the Council of State Governments in developing suggested State environmental legislation.

REMARKS BY THE HONORABLE RUSSELL E. TRAIN,
CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY,
AT THE OPENING OF THE NATIONAL SYMPOSIUM ON
STATE ENVIRONMENTAL LEGISLATION
MARRIOTT TWIN BRIDGES HOTEL, ARLINGTON, VIRGINIA
MARCH 16, 1972

Governor Moore, Speaker Smith, distinguished participants. On behalf of the President and Vice President and the Federal agencies participating in this meeting, I welcome you to the opening session of the first National Symposium on State Environmental Legislation.

This is an historic occasion. Recognizing the seriousness and breadth of our national environmental concerns, the Council of State Governments and its constituent and cooperating groups has joined with the Council on Environmental Quality, the Environmental Protection Agency, and the Department of the Interior to review an agenda for State action in this area.

This is the first time such a comprehensive exercise of State-Federal discussions has taken place. The product -- an agenda for suggested State Legislation in the environmental area -- is for the Council of State Governments to determine. But, from the point of view of the relevant Federal agencies, we want to share with you a chance to discuss our experience, the relevant existing legislation (both State and Federal), and the areas where our agencies and your representatives have seen a need for future State legislation.

Because this is an experiment in intergovernmental cooperation we will be looking for ways to improve this process. Please do not hesitate to make suggestions to the Program Committee as to how the process can be strengthened in the future. There is enough substance in the agenda before your ten workshops to occupy many conferences for many months. It by no means covers all the areas where we would like to see State environmental legislation. But time is short. The agenda before you, covering some key issues in pollution control and land use, is an excellent one to start with.

As I understand it, the issue before your workshops and symposium will be whether suggested State legislation on these items should be on the agenda of the Council of State Governments to review in May. It is not essential to arrive at texts of bills here, although it will expedite matters where you can.

On a majority of the items before you -- the water quality permit legislation, legislation to control sedimentation and toxic waste disposal, noise control, State land use policy and power plant siting, the Administration has made proposals to Congress which are in various stages of passage. Water quality permit and noise legislation have passed the Senate and House respectively, and there are good prospects for laws in these areas this session. On land use and power plant siting, hearings are being completed and we are hoping for some floor action before long. In all these areas we invite your help and support before Congress.

President Nixon, in his three environmental messages of the last three years, has presented the most comprehensive agenda for Federal environmental action ever put to Congress. But in many of these areas the States are already showing active leadership and with respect to virtually all the measures I have mentioned we now have before Congress, we have premised our proposals on strong State environmental programs.

There is every reason for you to press forward with consideration of your agenda for State action now. There are great opportunities here for your Governors and legislatures to serve your citizens. Because we believe deeply in both the strength and versatility of our Federal system and in the importance of our common environmental concerns, we on the Federal side are delighted to have this opportunity to meet and work with you.

REMARKS BY HONORABLE CECIL D. ANDRUS
GOVERNOR, IDAHO, BEFORE THE
NATIONAL SYMPOSIUM ON STATE
ENVIRONMENTAL LEGISLATION
MARCH 16, 1972

One of the most perplexing dilemmas we face is the ability to live with change. Nearly everything is changing -- and changing at a faster rate than ever before. As a result, some of the "sacred" traditions of years gone by no longer have a place in our society.

There was a time, about 100 years ago, when Members of Congress and Federal Officials could stand on the banks of the Potomac and see in the West an unlimited supply of clean water, clear air, minerals, forests and wildlife. Today Congressmen and officials can still look West, but they can't see that limitless array of natural resources.

At one time the smoke-stacks of the nation belching black clouds from industrial complexes were proud symbols of achievement. Today, those same smoke-stacks are categorized as polluting villains.

At one time the stock certificate of a large American corporation bore an engraving of a factory filling the air with smoke. Not too long ago, the engraving was changed in the face of criticism generated by today's changing standards.

In like manner, forests in the early days of our nation's development were slashed clean to provide lumber needed for a growing America. No thought was given to the quality of the environment in that industry either.

But, today, the battle rages over clear-cutting. I, for one, join with those who urge that clear-cutting be stopped except as a specific management tool.

Even early day farmers abused their lands; robbing it of productivity and opening it to erosion. Again, the thought was always of new lands still to be cleared and made productive.

Hunters slaughtered the buffalo, carrier pigeons, ducks and geese. Today, Ducks Unlimited is working to preserve and expand the migratory flocks that survived. There are no carrier pigeons to save.

As a nation, we have spilled garbage, sewage and effluents into rivers and lakes without a thought for the consequences. Today, the Lake Eries, the Potomacs and the Hudsons are mock testimonials to our careless bliss.

In other words, we have been a greedy nation. . . .a nation without concern for the generations who should inherit the land.

That's history now. The eventual solution to our environmental problems will not be found by creating scapegoats or by casting stones at the past. Instead, Environmentalists and Industrialists -- citizens and their government -- must work together to devise methods for facing the problematic heritage of our past.

I have always admired the tact and wisdom of former Interior Secretary Walter Hickel. Several months ago, in San Francisco, Hickel told a gathering to "replant in the hearts of Americans, the freshness of a tree."

He said, "Like a tree, the results will not appear tomorrow . . . it may take ten or twenty years. . .but we can solve our problems."

That, in essence, is what the battle to save the environment is all about. We can't clean up our water, air and cluttered surroundings all at once. But, we can begin by planting the seeds of improvement so that in 10 or 20 years our environment in every state will once again be a proud resource of a renewed American people.

I firmly believe that the environment must not be a partisan issue. If we are to overcome the difficulties of improvement, the mistakes of past and present despoilers, and the American addiction to the "develop at any cost" philosophy, the environment must be a non-partisan, unemotional and objective issue.

We must decide the issues of air and water quality, off-shore drilling, the trans-Alaskan pipeline, comprehensive zoning and others on their merits... on benefits vs. costs... not on whether there is a Democrat or a Republican in the White House or the State House.

Albert Einstein is not remembered as an environmentalist. But, I think in many ways he understood the dangers of unregulated progress and growth. He said once that, "the concern for man and his destiny must always be the chief interest of all technical effort. Never forget it among your diagrams and equations."

Those words are as relevant today as they were the day they were spoken.

Someone once described decision-making as "the action one takes when he has information so incomplete that the answer does not suggest itself."

That's what we face as we work to insure a better environment in the years ahead. No one has all the answers. Information is very incomplete. And, because of that, there is a dire need for mutual confidence between government, industry and consumers. We must cease the practice of industry standing in one corner saying environmentalists are all bad. . . environmentalists standing in the other corner saying industry is all bad. . . and government refereeing from the center of the ring trying to appease both. We can no longer busy ourselves with petty fighting while the solutions to problems escape us for lack of additional energy to find them.

During this symposium, as you display your concern for uniform environmental legislation, you must make certain that you are honest with yourselves and with others.

Not all dams are unsuitable. No all industry is indifferent. Not all profits are derived with too great an expense to our natural resources.

This symposium...this coming together...in fact, this rendezvous of environmental concern, reminds me of a colorful chapter in Idaho's past. In the early 18-hundreds, at Pierre's Hole in the Western Teton Valley, in territory that was to become Idaho, Indians and mountainmen, trappers and traders all rendezvoused. They met to buy and sell; to talk and sing; and to trade stories and methods for surviving the dangers of a near-destroyed environment.

You...Governors, State Legislators, Congressmen, Attorneys General and Federal Government officials...are rendezvousing to trade stories and methods for surviving the dangers of a near-destroyed environment.

You must not fail this task. You must be a team of dedicated men with insight and creative genius...a team to redesign methods of achievement and to remake the ravaged lands we have so brutally abused.

In closing, I'd like to say that the environmental cause needs a symbol...a symbol of unsimulated success. I believe Idaho is that symbol. Our state has been fortunate. We still have an abundance of clean air, clear water and uncluttered lands. Idaho's efforts to maintain and preserve the environment are a blueprint for the entire nation's environmental ills. As Idaho succeeds in making the Snake and Portneuf Rivers "trout clean", she illustrates for those who inhabit the shores of the Potomac that their efforts are not in vain. As Idahoans work to preserve Hells Canyon and the White Clouds, she is a symbol for others who are fighting for rivers and mountains in far distant states. As Idaho grows and develops in a way that will improve her delicate complexion, she brings hope to other states and other nations.

If you, the delegates to this National Symposium, work diligently to draft fair and workable legislation to solve environmental difficulties, the spirit of your diligence will permeate throughout the nation. And, that spirit could well be remembered as the beginnings of the greatest war on resource abuse ever undertaken by man.

Thank you...

REMARKS BY HONORABLE KENNETH M. CURTIS
GOVERNOR, MAINE, BEFORE THE
NATIONAL SYMPOSIUM ON STATE
ENVIRONMENTAL LEGISLATION
MARCH 16, 1972

Speaker Smith, Chairman, Train, Distinguished Participants, as the Immediate Past-Chairman of the National Governors' Conference Committee on the Environment, I want to thank the Environmental Protection Agency, the Council on Environmental Quality, the Department of the Interior, and all other Federal Agencies which have given time, money, and manpower to making this National Symposium on State Environmental Legislation possible. Chairman Train, you say that the Federal Agencies "want to share a chance to discuss your experience at this experiment in intergovernmental co-operation." On behalf of the states I say thank you. Thank you for coming to talk to us and to listen to us. We in the states feel at once too far away from the center of Federal decision making and too close to the Federal bureaucracy. That is not a contradiction. You, Chairman Train, have graciously invited us to help before Congress. Unfortunately, each state can not make a substantive contribution on each major issue and each major bill pending before Congress in the environmental field. As it happens, some environmental legislation affects some states more than others. I suppose the obvious example is coastal planning legislation which would not necessarily stir up a crisis in Nebraska. But which might get Maine scurrying down to Washington. On most issues, however, it is more difficult to determine how closely a state should look at national actions in the formative stage. However, when the national legislation is passed and we are all of a sudden visited by a Federal representative telling us to close down an industry, or build a treatment plant, we feel all too close to the

Federal bureaucracy because in many cases we have been working with the same industry or the same polluter on the same problem without knowledge that the Federal Government was about to swoop in. So we have been both too far from and too close to national action. This Symposium is exactly what is needed: A place for us to talk to one another. Chairman Train, you say that in many of the areas covered by proposed Federal legislation, "The states are already showing active leadership and with respect to virtually all the measures I have mentioned, we have premised our proposals on strong state environmental programs." I take that as a compliment which I accept on behalf of all state Governors.

You are undoubtedly referring to such moves as the Delaware decision to limit development on the coast, the Maryland decision to tax electric power and to use that tax directly to plan for future electric needs in a way that will not harm the environment. You might also, of course, be referring to my state. I do not come here to beat my chest over Maine's accomplishments. Indeed, my chest is rather sore right now, since we just finished a special session of the legislature at which not all of my proposals were accepted. I do believe that Maine can be taken as an example in certain areas. And because my expertise is limited to my state, I want to start off this Conference by speaking for a few minutes on what we have been able to accomplish. I hope that the representatives of the other states here will not feel that I am stealing the show for my state. Rather, I am just saying that we have done this, recognizing that many of you have done equally important things in you own state from which my representatives hopefully will learn.

But before I concentrate on the basic issue before us, the question of state legislation, I must emphasize certain points of national importance. First, let me compliment the Environmental Protection Agency. EPA enjoys the reputation of being a most vigorous young department in the Federal establishment. EPA's morale is high. EPA's men seem to be everywhere. Your enforcement actions have shut down a number of polluters, have caused others to invest millions of dollars, and have made everybody take notice.

But your very activity has raised certain problems. As you and the states demand cleaner factories, cleaner houses, cleaner cities, you and the States are going to have to pay your share. I hate to start off with a club, but it is a club which is swinging dangerously and may hit you or the states first. I refer to the lack of financial support for local pollution control. I just can't forget that the Federal Government owes Maine \$14,000,000 for projects which we have pre-funded under a promise of the Federal Government to pay its share later. We at the state level are now having to keep two sets of books just like some wealthy taxpayer. The difference is, in our case, we want the government to catch up with us. Because when the government catches up with us, it will find out that it owes us \$14,000,000. We are telling industry to burn cleaner oil, to put clearer effluents into the streams, to develop alternatives to river logging operations, and open pit mining and so on. We are telling industry to act in good faith. Now we must keep the faith. I realize that I am talking to people who share my conviction that we should all get more money. What I am asking is for everybody in his capacity as a Federal administrator or a state administrator to make his feelings known -- to let the crisis show through. The crisis? Lack of proper solid waste management, lack of

proper land use controls, lack of proper plant siting legislation, and the lack of funds to build the necessary physical substructure (if sewers can be so grandly described). It is simply not responsible government to require industry to meet timetables which we ourselves will not be able to achieve. Further talk without massive inputs of Federal dollars would be irresponsible.

The most immediate piece of Federal legislation on our minds is probably Senator Muskie's Water Pollution Control Act. We must have a version of that legislation with a strong state role and with substantial financial commitments immediately. The proposals will have us clean by 1974, much cleaner by 1976, much much cleaner by 1981, and too clean by 1985. Let me support the drive to get us too clean by 1985. I realize the critics are saying that we've got to learn to balance our priorities, to weigh costs against benefits, to question the true desirability of reducing the last 5 percent of pollution. But we don't know what technology will bring us by 1985. Would hate to set short goals at this point based on a fear that our technology will not allow us to meet them by 1985. Let us not let the cynics' malaise eviscerate our movement in its infancy. We have to be aggressive. The environmental task is a noble one for the very reason that it may be susceptible of completion. And if the EPA engineers and the other Federal officials work as cooperatively as they have been with state commissions and if both are funded, we will be on our way to that worthy goal.

Federal action in the pollution control field has smoothed the path of State legislation in a curious way. While Maine legislation has actually been tougher than the Federal legislation in many ways, the public has seen the national and State efforts as a one piece program designed to clean things up. We have had less local resistance to pollution control laws than we might have had the local resisters not felt the inevitability of the process behind our moves.

The Muskie and Blatnick water pollution control acts have emphasized the importance that all government attaches to cleaning up the nation's waters. If we get backing from Congress in the form of commitments to high goals, adequate current appropriations, and repayment of the massive debts that have built up under the pre-funding programs, we will keep the national press full of the sense of urgency which in turn helps states to enact locally tailored clean-up laws.

But I am here to concentrate on state legislation, so let me take you with me to Maine - vacationland - the beautiful state at the eastern doorway to the country with the fabled coast.

What about the Maine coast?

Oil inadvertantly helped clean up the Maine coast.

We thought, in 1968, that we were going to land a big oil complex at Machiasport in eastern Maine. In fact, we launched a cabinet-level investigation of the oil import quota system which the new england governors have since decided to challenge in court. We set off national investigations which contributed to the lowering of the oil depletion

allowance. More surprisingly, we reaped a harvest of more environmental legislation, most of it passed on an emergency basis at a special session of the legislature, than we could otherwise have generated in 25 years.

We have, rather by accident, learned that one way environmental legislation is passed is in reaction to someone's proposing putting a super highway through a beautiful park, sending super tankers by scenic islands, or emptying sewage into residential lakes.

Responding directly to the presumed oil threat and also relatedly to the existence of the second largest oil traffic on the east coast at Portland, Maine, our first major environmental law was aimed at coastal oil handling. This law imposed a license fee of 1/2 cent per barrel of oil transferred along the Maine coast from ship to ship, from shore to ship, or from ship to shore. The money generated by this oil transfer license fee is placed into a state fund to be used for cleaning up oil spills and for compensating oil spill victims, with the fund itself having a legal claim against the polluters. The fund shall not exceed 4 million dollars. Whenever the fund reaches that amount, the 1/2¢ per barrel charge is reduced accordingly.

Maine led the way with this legislation. Major oil companies and the Portland Pipeline Company have challenged the Maine Oil Handling Law under these legal doctrines, among others: the supremacy of the admiralty law, interstate commerce and Federal preemption, the "Import-Export Clause" of the Constitution, equal protection, due process, the right to jury trial, and various State constitutional grounds. A temporary restraining order is currently putting the license fees collected into an escrow account.

To complement the oil transfer law, the special session of the 1970 legislature adopted what we now call the site approval law. The concept was staggeringly simple and bold. Maine would give to its Environmental Improvement Commission the right to say no to anybody who proposed to put an oil terminal in Maine unless he met four broad criteria: that he had financial capacity to do what he proposed to do; that he had made adequate provision for movement of traffic; that the soil on which he proposed to build was suitable, and that the development in general would have no adverse effect on the natural environment in the broader sense, including scenic character. The legislature, thinking it unwise to apply this broad state power only to oil facilities, subjected to the commission's jurisdiction any other business development which would occupy 20 acres or more of ground, or 60,000 square feet of building floor space, or would require any waste discharge license under Maine's clean air and clean water legislation. Under this sweeping definition, which took in everything from sub-divisions to ski resorts, Maine now can legally tell anybody who hasn't done a proper job of preparing that he simply can not build.

They are challenging us on that one too on numerous legal grounds. We have been taken to court by Maine Celan Fuels, Incorporated, after that company was denied permission to build a coastal oil refinery for failure to meet the four criteria I mentioned. If Maine wins this case, many states may wish to follow our course and gain comparable control over major commercial and real estate developments.

As it happens, more than 95% of all applicants under the site approval law have their projects approved. As we live under the law, we expect the percentage to rise. In effect, the law simply makes people do their homework and do it well. It acts as a surrogate national environmental policy act, to make the applicants consider the environment and many of the subsidiary effects of their proposed development and work out their arguments in advance. They see problems they would never have thought of before this law was enacted.

The site approval law puts the state in a reaction posture. We are seeking also to inject the state into the overall affirmative planning process. One of the most significant steps in this direction is a recently enacted law which requires local government to zone within three years, all land in the state of Maine which lies within 250 feet of water. If the local government has not acted within this time frame, the state will step in and do so. This is a step in the direction of both coastal planning and state-wide land use planning. Among more specific legislation related to planning, we are requiring the dumps within 300 feet of water be phased out and eventually shut down or moved and that logging operations on rivers cease. We have even heard arguments about the wisdom of employing state effluent charges.

Finally, in the Spring of 1971, we set up what may be the nation's zoning board. Over half of the state of Maine - an area as large as the rest of new england combined - is virtually uninhabited, and divided into what we call unorganized territories. In order to insure that these unorganized territories don't become disorganized territories, we enacted a law setting up a land use regulation commission with comprehensive zoning

authority over the entire unorganized area. Once the agency has completed a comprehensive land use plan, it will have the power to regulate development in all the unorganized territories to conform with the guidelines of that plan.

We found that when the threat is big enough and the legislature is bold enough, a state can pass revolutionary laws in the area of land control and environmental protection. As you would expect, we are paying for it. The environmental section of our Attorney General's Office is one of the busiest sections.

We have-regardless of our fate in the courts - put words like aesthetics, scenic quality, soil suitability, tertiary treatment, and ambient quality standards into the headlines. People are recognizing that we can affect the quality of life through environmental legislation. We are proud of our experiment, and we will offer the lessons learned in our legal battles to all who think we have taken a wise course in our drive to clean up.

But the states can not do it alone, and you Federal administrators are in the ideal spot to influence decision makers and get friends to apply pressure to make yourselves more important. Though I rarely do, I now urge a bureaucracy to expand in numbers and influence by pushing your own program.

Those of you who are here representing states can urge such things as local comprehensive zoning, lands use regulation, development control based on aesthetic considerations, and the imposition of specialized fees and taxes on dirty products to set up contingency funds to clean up when things get spilled. None of these goals requires particularly large outlays of state general fund appropriations. Where you need state money in abundance, such as in the efforts to eliminate open dump burning or inadequate sewage treatment, I urge you to buttonhole legislators and tell each one to put his money where his feet are. That's the only way to clean up the unsightly, unhealthy, unholy mess through which too many americans have to walk every day to get to work or play.

I have set out the problems and commented upon some of the solutions with which I am familiar. As key noter, I should add a final congratulation and a charge.

Those of you who have made the Environmental Protection Agency a name to be feared by polluters, and those many of you who have worked long to establish state programs which are only now coming to be appreciated are to be congratulated. From executives to citizens, the country has begun to acknowledge its debt of gratitude to you for alerting us to our duties in this field.

But having congratulated you, let me set the only tone for a productive conference: A discordant tone. I urge you to challenge one another, to be aggressive, and (when you leave) to go out with the avowed prupose of bullying your views into acceptance. You, the experts, must make your views heard and your demands felt.

If the Environmental Movement becomes captive or if its administrators become cynical or fatalistic, the entire Nation will be disserved. In your case, another coat of whitewash will merely add to the pollution.

REMARKS BY THE HONORABLE ROGERS C. B. MORTON
SECRETARY, U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE NATIONAL SYMPOSIUM ON STATE
ENVIRONMENTAL LEGISLATION
MARCH 16, 1972

Much of the value of this Symposium is the specific and detailed information on environmental legislation you will carry away. However, I believe there are some essential principles which are of value, too. This evening I am going to offer a few of them for your consideration.

These principles....or generalities....or concepts which is what I prefer to call them....are common to more than one environmental issue. And that is why it is important to understand them. They are like the laws of mathematics. If we are able to apply them, their logic can lead to solutions for a number of different problems.

To illustrate these concepts, I will discuss some of our Federal environmental policies, both enacted and proposed. And in closing, I will make a few remarks about the roles and relationships of the States and the Federal government in improving the environment.

The first of these concepts is to avoid one-dimension solutions to public problems. We must learn to solve complex problems with a broader perspective. If good land use planning policies had governed the growth of our cities....if we had viewed poverty and crime, housing and mass transit and other problems of our cities as interrelated....if we had integrated our urban assistance programs....then we might have avoided the crises in many of our cities today.

Section 102 of the National Environmental Policy Act is an outstanding example of a new effort to deal with public problems in more than one dimension. It injects the environmental dimension into every major Federal action by requiring an impact statement.

Recognizing other needs for multi-dimension approaches to many problems, the President has asked the Congress to enact a National Land Use Policy. It would encourage the States to establish land use planning agencies. These State agencies would deal with critical land use problems that have regional, State-wide and national impact which most of us realize are beyond the capabilities of local jurisdictions to plan and control. They would be charged with protecting areas which are of more than local environmental consequence. And they would identify the most feasible sites for regional facilities like major airports and highways which are becoming difficult to locate and which require more stringent controls on land use.

I want to stress my strong belief in the need for land use planning and my strong commitment to securing this legislation. A well planned use of the ground environment is essential to an orderly society -- it is essential if we are to solve some of our environmental, social and economic problems.

In a recent request to the Congress, Secretary Volpe has asked to broaden a long established one-dimension program. He has asked the Congress to allow the States to divert some of the funds they receive for highway construction to mass transit, in both urban and rural areas. I am confident we are going to see more of this kind of action.

Another action we need -- and this is my second concept -- is to update regulatory legislation which has been on the statute books for a while. Too often, our energies are focused on writing new laws instead of improving the ones we have. We need to review our regulations and our regulatory processes periodically to determine whether they are still effective....whether they have become cumbersome....whether they regulate a problem which no longer is critical.....and whether they need to be broadened in scope to deal with offspring of the original problem.

It was this concept that prompted us to ask the Congress to revise the laws which regulate mineral development on public lands. The laws we have now are far out of date. The Mining Law of 1872 is a century old and the Mineral Leasing Act has been on the books for more than 50 years.

The new mining law and the new Mineral Leasing Act we are asking for would be a vast improvement over what we have now.

Both acts could allow us to protect the environment; today we have very little authority to prevent mining activity in fragile environmental areas or to assure that good environmental practices are followed when mining is authorized.

Both acts would provide a more fair return to the public for minerals taken, through more realistic rentals and royalties and added emphasis on competitive bidding where it is applicable.

The new mining law would enable the Federal government to retain ownership of lands on which there are mining claims and to exercise more management control over the land's surface. As it is now, a mining claim is almost a clear title and some clever people have been using them to obtain cheap vacation homesites.

Another major updating of legislation involves the management of the public lands, 450 million acres or 20% of the surface of the U.S. The

National Resource Lands Act we have requested from Congress would give the Secretary of the Interior broad and flexible authority which is badly needed. The act would facilitate orderly resource use and environmental protection based on comprehensive land use planning and land use classification.

Concept number three. We have got to get used to looking years ahead....the problems require it. The demand for change has accelerated while technology and approval or permit procedures require more time than they used to. The power plant siting bill calls for procedures that are the way we have to go. As presently proposed, it will require electric utilities to file long range construction plans annually with a State agency. The plans would indicate in general terms the bulk power facilities to be built in the next ten to fifteen years....and in exact terms the location and description of plants or transmission lines on which construction would commence within the next five years. The certifying agency would authorize construction after necessary investigation, including public review hearings, if it found that the facility would "not unduly impair important environmental values and (would) be necessary to meet electric power needs." Appeal to the courts would be allowed.

Another way we have to look ahead is on national energy policy. Our demand for energy will continue to increase at a rapid rate....but we have a new requirement....it will have to be clean energy. The President indicated the long-range efforts we need to meet the energy problem in his Clean Energy Message to Congress last June.

He called for development of the fast breeder nuclear reactor -- an efficient and clean source of power -- by 1980. He directed the Interior Department to accelerate offshore oil leasing, the development of our oil shale reserves and research into the conversion of coal to clean gas.

And in a new kind of effort, he called for measures to promote conservation of energy by the consumer. He suggested that energy be priced on the basis of its full cost to society, including environmental considerations. Also, he directed the Department of Housing and Urban Development to issue more stringent standards for insulation applied in federally insured homes. These new standards would reduce the heat loss by one-third in a typical home.

I mentioned that we needed to update our laws periodically. Well, for the same reasons, we need to examine the organization structure of government periodically and update it too. This is concept number four. And again, I think we can see this concept is being applied already. The Council on Environmental Quality has been established to advise the President on environmental policy. EPA has been established to insure air and water quality standards which are enforced by State action.

But the most far reaching organization change is still in the Congress...the creation of the Department of Natural Resources. The primary mission of the new Department would be the safe management of the Nation's physical environment and the preservation and balanced use of its natural resources.

Today, responsibility for environmental and conservation matters is fragmented throughout various Federal agencies. Some examples: three departments are developing water resources; four departments in two agencies manage public lands; and six agencies in three departments administer Federal recreation areas. This fragmentation is uneconomical. It makes effective management of the environment and natural resources extremely difficult. DNR is a change that must come if we are to meet the resource management and environment challenges of today and the future.

The States traditionally have played a lead role in environmental protection. Though it has not often been recognized nationally, State innovation has frequently set a precedent for Federal action. For example, California's automotive emission laws, born of acute smog in the Los Angeles basin, set the stage for legislation on national emission standards. Wisconsin's ban on DDT was a harbinger of similar Federal action. Permit systems for pesticide use in California, Florida, Maryland and New York established precedent for proposals at the Federal level. And in land use planning, Vermont now has a State-wide land use planning agency -- the kind of agency that States would establish under the National Land Use Policy Act. In a similar manner, Maryland has established power plant siting procedures which our power plant siting bill would encourage all the States.

Even now, with more direct Federal involvement in environmental protection and resource management, the States will continue to play a vital role. They are the front line of management, planning and enforcement.

At the Federal level, our objective is to encourage the States to act on pressing environmental and resource problems....to encourage enough uniformity so that environmental regulations do not give one State leverage over another in attracting new industry....and to involve ourselves directly only when the States don't act or the problems go beyond State boundaries.

The only life support systems we have for the long run is the delicately balanced ecosphere of the earth....the critical environmental question is how well we can use our technology and our social and government institutions to develop and maintain harmony with nature's ecosystems.

In his environmental message, President Nixon addressed this question when he said: "The pursuit of environmental quality will require courage and patience. Problems that have been building over many years will not yield to facile solutions. But I do not doubt that Americans have the wit and will to win -- to fulfill our brightest vision of what the future can be."

New Environmental Priorities
for Federal-State Partnership

William D. Ruckelshaus
National Symposium on
State Environmental Legislation
Washington, D. C.

March 17, 1972

This is the first symposium to bring together all appropriate elements of state and federal government to develop legislation that can reinforce national environmental programs. The first, but most assuredly not the last. For there are few issues today which elicit such continuing and high level public interest.

Long after most of today's headline stories have faded into history, you and I--or our successors--will still be hard at work to restore that balance of ecological forces which is essential for the survival of the human race. We have a long way to go and so I am glad to hear of the fruitful initial exchanges in your workshops. You are engaged in an historic endeavor.

And you deserve to be optimistic. I think the tide of events is running with you. For the last 40 years power has been flowing to Washington. The states haven't had the resources or the confidence to tackle problems that are nation-wide in scope. As a former state legislator I have shared your frustration over this impotence.

But this Administration is determined to break the habit of bucking problems to Washington--because the hard fact is that unless our problems are solved where people live and work and play, they just aren't going to be solved, period. So we might as well stop looking to someone else for

answers. Every level of government today has responsibilities which must not be ignored.

As I travel about the country I see a tremendous surge toward what the young call "participatory democracy". People want to control their own destinies. State and local governments are now responding to this deep-felt need to share in power and responsibility.

You are seizing new opportunities in fields as diverse as consumer protection, pollution abatement, transportation, civil rights and land-use planning. And these are just the harbingers of a new activism. True, the successful outcome of such initiatives will depend in many cases upon the passage of the President's revenue sharing bill and the fruition of other New Federalist proposals.

But the day-to-day thrust will usually be yours. For example, the new pesticides bill pending in the Senate divides insect killers into two categories of use--the general and restricted. The restricted could be applied only by trained applicators with state licenses and each state would have to see to it that these so-called economic poisons were disseminated in a responsible manner.

Moreover, in coming years you are going to be more heavily involved in the mounting problems of solid waste disposal. We in EPA are financing a number of experimental disposal techniques and we are helping close down hundreds of open dumps which threaten public health. But only you in the state capitals have the authority to set up coordinated, regional solid waste policies.

The states also enjoy a first level responsibility with regard to implementation of the air quality standards mandated under the Clean Air Amendments of 1970. The standards cannot succeed as a federal program alone--they must be creatively enforced by state pollution control officers, keeping in mind always that the goal is optimization. We cannot purge the air overnight, but we can make steady progress up to the very limit of technology and feasibility--if the states do their duty.

Again, if the water pollution bill now before Congress should be passed, you will be given additional powers to control effluent discharges and build new sewage treatment plants. Pollution enforcement is still substantially up to you and the federal government will not intervene unless states fail to act.

During the last year we have inaugurated a permit program to regulate the discharge of wastes into navigable waterways and their tributaries within the continental United States. The Refuse Act permit system is not perfect. Clearly the division of administrative authority between several agencies of government defies sound management. The program does not apply to all discharges either--only those not discharged through a municipal system.

But it is the best system we could devise under existing law and is a giant step toward clean water. For the first time we will have a nationwide inventory of industrial waste being discharged directly into our waterways. These discharges will be controlled through the permit program, or its successor in the new water bill, and through this control our lakes and

rivers will be better protected than ever and will start to recover their biological vitality.

And ultimately, of course, there is the vast realm of land-use planning. I'll put it to you as frankly as I can--we cannot escape large-scale, profound transformations in the way we handle our dwindling reserves of land. I know full well that this country still enjoys millions of acres of undeveloped land, land that may never be developed. But that is not the point.

We do not have enough land where we need it and in our kind of society we never will. Unlike air and water, the land in and around our giant metropolises cannot usually be "recycled" or purged of the effects of unwise or premature development in less than generations and seldom reverts to its natural condition in any case. Look around--the fact is self-evident.

The President has therefore proposed legislation that would provide \$100 million during the next 5 years to help the states regulate the use of our diminishing land assets. It is critical that this bill become law quickly--critical for any state whose cities are threatened by expanding rings of exurban housing and commerce; whose beaches, mountainsides, lakes, wetlands and riparian sites are likely to be developed for vacation resorts, or whose irreplaceable farm acreage may be gobbled up by airports, highway interchanges and other public facilities.

Now the President's bill recognizes that most land decisions involve

matters of purely local import, so the states would have the power to override local land decisions only if they adversely affected broad regional interests. Before a state could get federal planning grants it would have to inventory and control use of those places where insensitive siting would cause irreversible damage or expose inhabitants to excessive risk from natural hazards.

In effect, states would have to create a policy for location of major new developments such as housing, transportation lines, shopping centers, hospitals, colleges, office complexes and amusement parks.

At first glance such a bill may seem drastic, but in my opinion the alternative is sweeping federal controls. I believe we should act to forestall that eventuality instead of putting off what must be done and then regretting it a few years down the pike.

Post-ponement often generates angry over-reaction, unrealistic expectations and bitter disappointment--the pattern of the 60s that all of us should wish ardently to avoid. The states just do not need and cannot tolerate another massive program of federal intervention that may be unsuited to their real needs.

What, then, is the natural rôle of the Federal Government? It is to articulate goals, to oversee research and to set and enforce national standards in areas where the states cannot efficiently act alone. That, in fact, is the task of EPA.

President Nixon established the Environmental Protection Agency to replace a haphazard, fragmented federal approach with a coordinated, sustained effort to protect the living environment. By consolidating in EPA the responsibility for regulation of air, water and noise pollution, pesticides, radiation, and solid waste disposal he recognized officially that no single ecological problem can be solved unless all are solved.

Obviously that requires close cooperation with the states. Within the last year, my staff has met with representatives of all of the states attorneys general to discuss environmental enforcement problems. We noted that many of the states have full-time attorneys assigned solely to environmental matters.

We agreed that it is as important for the states to have the machinery to enforce environmental laws as it is for us on the national level.

President Nixon has said these must be the years when America pays its debt to the past by reclaiming the purity of its air, its water, and its land. With persistence we can pay that debt and pass on to our children a clean world to live in. But we must act now, and that is why the President has proposed a package of environmental laws that is unprecedented in any nation.

Among major presidential initiatives still awaiting action are measures to regulate toxic substances, tighten control of pesticides, limit harmful noise, preserve historic buildings, improve siting of power plants, regulate ocean dumping and strip mining, expand wilderness and prevent oil spills--among others.

The President wants to control the water pollution menace by providing \$12 billion over the next three years for treating municipal sewage, and we have recommended to Congress that whatever version of this bill passes, it include funds to reimburse states which have had the initiative to pre-finance sewer construction costs.

However, I know that everyone here is concerned lest pollution control cost more than it's worth. Some people doubt whether we can stop polluting, recycle our wastes and restore the balance of nature without runaway inflation, unemployment or lower living standards. I think they are dead wrong.

Obviously, pollution control does cost a lot of money if you look at the gross dollar totals. The Council on Environmental Quality estimated that the combined cost to industry and government of air and water clean-up plus better management of solid wastes would amount to around \$105 billion between 1970-75. But that is less than one percent of the cumulative gross national product in those years.

Industry spent approximately \$3.6 billion for environmental purposes during 1971, but such outlays generally represent less than one percent of the value of shipments. What's more, the environmental costs of one firm represent income to other companies and employees, so that pollution control should not affect profits or employment on a large scale. Perhaps the opposite will be true.

We in EPA recognize that the nation's resources are limited and that we cannot do everything at once. We must watch costs carefully if the goal of a decent environment is to retain broad public support.

But those who emphasize the cost of cleaning up usually forget to balance out the costs of continuing to pollute. Pollution control expenditures will certainly be small in the context of better health and less damage to materials and crops. Moreover, clean technology often requires rethinking industrial processes and thus opens up opportunities for higher productivity, expanded profits, rising real wages, better products and growing tax revenues.

Dow Chemical's experience offers encouraging evidence that well-managed companies can cut pollution at reasonable cost. At Midland, Michigan the company is building 28 cooling towers at a cost of \$7.2 million to reduce the thermal load on the Tittabawassee River. The towers will more than pay for themselves by reducing corrosion and cutting daily water intake by 100 million gallons.

Indeed, anti-pollution efforts at Midland have saved chemicals worth more than \$6 million over 3 years. At a Dow plant in Texas, \$900,000 put into controls saves \$265,000 worth of chemicals every year. Not every anti-pollution project results in net savings, but in a highly-competitive industry, Dow's profit margin of 24.5 percent is well above the industry average of 18.7 percent.

Governments at all levels can help ensure these gains by good management of their own environmental programs. Illinois, Minnesota, New Jersey, New York, Oregon, and Washington have already established natural resource or environmental protection agencies, and a number of other states are currently considering them.

There is much merit in establishing a central focus for environmental matters but this mustn't be used by other agencies as an excuse for shirking their own responsibility. No single agency can police the environment and undo the damage of decades all by itself; indeed, the credibility of all depends upon responsible action by all.

Environmental agencies should not be given promotional roles in agriculture or commerce but be entrusted only with protecting environmental quality. They must lead and educate as well as regulate, letting citizens know that as we have all had a hand in degrading the environment, so do we all share a common duty to restore its natural balance.

For 200 years we Americans have enjoyed the temporary benefits of environmental laissez-faire. We laid waste a large part of our heritage in the name of freedom, convenience and personal profit. But unbridled freedom is license, not liberty. As a dirt farmer I knew back home in Indiana once put it: Your freedom to swing your fist ends at the tip of my nose.

Never before in history has man had less reason to do only as he pleases. Man's work today threaten the air, the oceans, the land, and, ultimately, life itself. In an ecological as well as a spiritual sense, to live for oneself alone is to die.

We can't enjoy true liberty or even life itself unless we give up our vaunted freedom to pollute. But if we do surrender that obsolete privilege we can experience life as it was meant to be lived: Free from waste, ugliness, despair and needless decay.

There are many voices in America today apologizing for our system, our technology. I don't. With tenacity and common sense we can restore our environment. This meliorist philosophy is becoming a part of the national consciousness and is turning us from exploitation of the earth toward a mature stewardship of our priceless natural heritage.

In making this transition we can create a new kind of society that is orderly, efficient and serene. Through an evolving federal-state partnership we can make a garden of the earth.

I am sure you must take great pleasure in the knowledge that you are helping to lead the way to this new world order.

REMARKS BY HONORABLE TOM MC CALL
GOVERNOR, OREGON, BEFORE THE
NATIONAL SYMPOSIUM ON STATE
ENVIRONMENTAL LEGISLATION
MARCH 17, 1972

I am delighted to join with you in this significant National Symposium on State Environmental Legislation, and I am singularly honored to be called upon to address this distinguished group of participants from state and federal governments.

I join in support of the concept so aptly expressed by President Nixon in his letter of welcome when he said "...for ultimate success we must rely heavily on strong state environmental programs. Our objective is to arrive at programs that reinforce each other and speed the achievement of our environmental goals."

My purpose here is to tell the Oregon story, to comment on some concepts we have about directions of environmental enhancement programs, and to speak to the issue of federal-state cooperative responsibility.

I am proud of Oregon and Oregon's program. I want to tell you what we've done not only because of my pride -- and many have indicated our programs were innovative, imaginative, and in some cases unusual, but mostly because by relating what has happened in Oregon we may help other states and localities with ideas useful to them in furthering prudent natural resource management.

I suppose the action that first dramatized the top priority position in which environmental affairs stood in the McCall administration was when I appointed myself Chairman of our then State Sanitary Authority early in my first year, 1967.

Overnight the entire state was alert to the importance my administration placed on these matters, with our insistence that changes would be made. It also gave me an unparalleled opportunity to be part of the administrative department that faced cities, industry, environmentalists, legislators, other departments and other priorities, as pollution problems were tackled.

I sat as Chairman when Oregon adopted its water quality standards, and had them approved by Secretary Udall, and our implementation program started.

The very fact of my personal involvement as Authority Chairman also unlocked twenty-two essential pieces of legislation held in the Legislative Assembly, and got them moving on the way.

Oregon was on the road, and on the record with a policy dedication that degradation of our priceless livability would be ended, and protection and enhancement of water and air and land and fish and wildlife and all our natural resources would have the attention and standing in government they deserved, and a good life demanded.

In 1967, Oregon was very much in the same position as most of the other states. We were demanding installations, facilities, and levels of treatment from cities that could not afford or too often were waiting for uncertain

federal dollars which either never came or came too late. And in the process of waiting, inflation-fed construction costs many times doubled the final charge.

We faced the issue squarely in the 1969 Session, and the Legislature agreed with me on a landmark concept of funding. With approval by our citizens in the May 1970 Primary, Oregon was able to provide bonds for pollution abatement facilities not at a fixed figure, but at one percent of our assessed valuation.

As Oregon grows, as the economy and base expands, as our needs mount, our bonding money automatically grows. For tax purposes, one percent now amounts to a bit more than \$190 million.

That initial constitutional change, and implementing law also has an equally important provision for handling the money. Thirty percent of the cost of approved facilities is an outright grant from the state. By agreed-upon contracts, the local governments take 70%. But all of the dollars needed can come from the state. When the project is approved, the money is available, and construction can get underway. We are not forced to wait for the promised federal appropriation.

The major action of the 1971 Oregon Legislative Assembly in the field of financing pollution facilities came when this same concept, state grant and all, was authorized for solid waste.

One of the most scenic roadways in the world, I think, is 101 on the Oregon Coast. We dedicated it as a scenic highway when it got underway as

a public works project in the depression of the '30's. Travelers enjoy magnificent vistas from the rugged headlands, as well as enjoying with close proximity the splendid Oregon beaches and the spectacular vigorous Oregon ocean.

Construction of the road has kept it along a narrow pathway of the coastal zone. Much of it runs immediately behind the first foredunes.

A 1966 campaign issue centered with great emotional fervor on whether this concept should be continued. I was on the side of continuing the initial concept. I lost that one - and construction stopped, and we are not building a highway on the Nestucca sandspit.

But we had barely turned down the heat under that kettle when the Highway Commission decided to invade another estuary and the steam of antagonism whistled violently again.

We met that problem with a now widely heralded Executive Order of March 3, 1970, which had the effect of stopping all precipitous actions invading the coastal zone, principally the estuaries. Construction activities by the state would end, and activities controlled by the state through permit approval would be held at a slow bell.

The rule was simply that we would halt, until sound land use planning had been cooperatively completed by local, state, and federal agency interests.

We had a stormy time, but from it came a new appreciation of the fragile and irreplaceable resources of the coast, of the overriding necessity for sound planning, and of a coordinate approach to zone management.

The 1971 Legislature gave us a Coastal Conservation and Development Commission, which in turn has provided a renewed level of local participation jointly with the state, and comprehensive planning is well underway.

Sometimes I think we agonize too much on what is yet to be done, rather than to be renewed and encouraged in our work by what has been done.

An Interim Committee on Agriculture gave us a land use planning concept adopted by the 1969 Legislature charging our cities and counties with completing land use planning and zoning state-wide by the end of 1971, or this hottest of all local issues would land in the lap of McCall and he would do it for them.

I'm not anxious for grabbing that ball and attempting to run -- but even in the face of some planning that lacks finesse, and with some that may be more surface compliance than substance, we do have planning commissions in each of our 36 counties.

Twenty-two counties have completed or are well on the way to completion of their planning, and 70% of our cities have done the job.

Oregon has many areas of extreme isolation and marvelous rural independence. One is Lone Rock, population 16, and I have a letter from them that is a classic -- it simply says, "Governor, no way"!

I am, however, reasonably undaunted, and still firmly convinced that land use planning with fair but firm zoning is the single most important action to environmental enhancement that we not only can enact, but must accomplish.

Without land use planning, which I know is local, but where responsibility for policy, guidelines, and final approval must be with the state, most of our improvement actions will be negated, and the ball game lost. For this reason, my Conservation Congress this year, the fifth in the annual series, will be centered on land use planning, its importance, how to do it, what criteria and guidelines are essential, and what structure can best accomplish our goals.

On this subject, we've done some land use planning in Oregon in a rather imaginative and unusual way, but it's all legal, and it's achieving our objectives.

Oregon has some treasured jewels in mountains and wilderness and primitive fastness we think are so precious, we hope few ever come to Oregon to discover them. One is the Three Sisters Wilderness, and it's a gem. It also, tragically, is our exhibit "A" of the inevitable clash between the 1872 mining laws and wilderness.

Deep in the solitude of the Three Sisters lies several mining claims held by U.S. Pumice Company. Pumice is what happens to lava when it is subjected to the explosive force of a volcano. It has little value, but many uses.

Mining is fully permissible under one of the better known compromises in getting the Wilderness Act through Congress. Having bulldozers, shovels and trucks completely prostituting an inviolable wilderness was incomprehensible.

The danger was imminent. Pollution control, however, remains the power of the state, and noise is a pollutant. Oregon, therefore, has set noise standards in our wilderness areas consistent with wilderness, but only consistent with a burro and a small shovel for miners. The riptide shows no sign of abating in the board rooms of the mining giants.

Most of our states, particularly in the west, have faced problems with uncontrolled sub-divisions, rampant land speculation, and terrific attendant problems of pollution. Local governments have not been equal to resisting the tax base increases, nor have they had adequate local ordinance controls. The state, however, has broad powers to protect the public health.

Oregon, by administrative action, is requiring approval of sub-divisions by state health authorities of the adequacy of sub-surface sewage disposal and domestic water. It's been remarkably successful, with wide local support. I think it shows that local authorities wanted to provide sufficient, sensible protection and this action provided it.

Oregon is the state with a bottle bill, and if there is a state represented here that has not asked for a copy of our law requiring a refund, you represent a minority. At latest count, more than half of our states, and at least twelve foreign countries have been mailed copies and comments.

And what I consider to be the most significant action in the entire field of natural resource protection thus far this century, is Oregon's beach bill, ensuring public rights to use of our ocean beaches for all perpetuity.

Oregon's program has many facets. We site electric generating plants of all kinds, whether nuclear or fossil-fuel fired by a Nuclear and Thermal Energy Council.

Oregon initiated a permit system to control pollution early in the game, and we've had encouraging success in water, and now we're moving to control air pollution by permit, as we control solid waste disposal by permit.

We have a problem with nitrogen supersaturation in the Columbia River system. Water cascades over the dams and traps nitrogen resulting in giving the fish something akin to what a diver experiences in having "the bends". The result kills the fish, more than 70% in downstream migrants.

We've made nitrogen a water pollutant, and with a standard of water quality established, we think it is proper to require the Army Corps of Engineers also to have a permit so that if they put the water over their dams it meets our pollution standards.

The Oregon story is one which reflects a continued determination that while we serve man and his economic needs, we will also serve the needs of our natural resources. It is a balanced approach to environmental enhancement with quality goals we know are achievable, in a time frame that is realistic.

In concept, the Oregon approach recognizes a priority list in pollution abatement. Achieving water quality first, because it was the immediate most serious. Approaching problems of air quality, establishing and adopting a program in conformance with national law, and setting up the proper implementation. Tackling solid waste, radioactive toxic and environmentally hazardous wastes next. And doing it with a permit system which we feel is the workable tool that gives us positive control of harmful discharges into our environment.

In cooperative efforts with the Federal Government, and in mutually achieving common goals with our individual and separate responsibilities, Oregon believes there can be a well defined role for each.

We are not such strong defenders of state's rights that we fail to recognize the strategic position of the Federal Government. Baseline environmental standards common to all the nation are essential. Economic and political pressures would cancel out effective control programs if this were not so. At the same time, we feel strongly that pollution standards above the baseline can be established by the individual state in water, air, and in radiation if the state so desires.

With Governor Levander of Minnesota, I led the successful effort of the 1969 National Governors' Conference in unanimously endorsing such a position with respect to radiation emissions from nuclear installations.

In this area of permits, it seems to me that a completely unnecessary duplication exists. Neither the states nor the federal agencies will accommodate the problem by maintaining intransigent positions, when flexibility is surely in order.

I'm pleased that Mr. Ruckelshaus is here. I've seen recent correspondence between my Director of our Department of Environmental Quality, L. B. Day, and the EPA Administrator that is not only extremely frank, but approaches a bitter sharpness. I suppose this is to be expected between two extremely able and crusading administrators, each more than capable of carrying the ball.

But isn't it sensible that where a state has a permit system which the federal agencies support and even praise, that the state permit be sufficient? Isn't a proper role for the Federal Government on of watchdog to ensure that the state is doing its job? Developing and approving standards in both water and air have been a joint effort. Unilateral action hardly reflects this.

Each state is well aware that the major part of financing pollution abatement programs must be the responsibility of the Federal Government. Few actions have been more damaging than high levels of promise and low profiles of performance in funding.

Local government does not have the open-ended budgets that are singularly the job of the federal domain. But while we're talking about dollars, let me reflect the strong impression that states would rather have a lower percentage of federal participation that is secure, than a high percentage which never comes to pass.

I would challenge this symposium that never has there been a time in this environmental improvement struggle when it is so important to define

the roles of the players, federal, state and local. I would hope we have developed sufficient maturity to approach boldly some major remaining problems.

We need a national energy policy that surely will reflect a maximum utilization of renewable resources, rather than a continued expansion of the dwindling supplies of fossil fuels.

It's long overdue for us to establish goals for environmental achievement for our bi-centennial in 1976; and to move ahead with serious purpose to accomplish population stabilization in a national population control program.

I've talked a good deal about Oregon. We'd love to have you come and visit, but for heaven's sake don't stay. Too many people and it would not -- could not be Oregon for very long.

But this all adds up to our joint responsibility as states and as federal agencies to plan for our growth, and to control it, rather than have growth pressures exhaust our resources, and plunge us into environmental chaos with almost no chance of salvage.

Our environment, our natural resources, our livability in all sections of this great land, this is our money in the bank, our capital. We dare not live off anything but the interest.

REMARKS BY THE HONORABLE RUSSELL E. TRAIN,
CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY,
BEFORE THE
NATIONAL SYMPOSIUM ON STATE ENVIRONMENTAL LEGISLATION
MARRIOTT TWIN BRIDGES HOTEL, ARLINGTON, VIRGINIA
MARCH 17, 1972

Yesterday morning I welcomed you at the opening of the First National Symposium on State Environmental Legislation. Now you are three quarters of the way through your agenda and it is time to put things into perspective.

Your efforts to prepare a package of suggested State Environmental Legislation now could not be more timely. We are coming into the home-stretch before Congress on the most comprehensive group of Federal Environmental proposals ever put forward by any Administration. While we will probably not get passage of all we have asked for in the President's Environment Messages, we have made more progress than is generally realized. There should be a very important new water quality bill. There will probably be legislation on ocean dumping, noise, pesticide, and mined areas protection, and perhaps laws on land use and power plant siting, among other items on our agenda. As I said yesterday, we want and need your help. A list identifying the President's Environmental proposals by their House and Senate Bill Numbers, and Committee assignments is available for your reference.

1973 could well develop as the single most significant year for State environmental legislation. I understand that all your legislatures will

be in session. The requirements in the new Federal water quality legislation with respect to State water quality permit programs will mean that most of your legislatures will have water quality on their agenda. This will provide a stimulus to look at other areas of State environmental protection and should create a receptive climate for your proposals.

As the President said in his welcoming letter to this symposium, "Our Federal Environmental Agencies will seek to give your effort full assistance." The country relies in many ways on your State programs to make the countless day-to-day decisions and to take the vast variety of actions that will spell the difference for environmental quality. We will continue to be available after this symposium is over to give you technical assistance and we will follow with keen interest the final shaping of the Council of State Governments' package of suggested State legislation for next year.

Having established this closer contact between State and Federal environmental programs, we will be looking for continued close contact. Both the Environmental Protection Agency and our Council on Environmental Quality are new, and the land use policy activities of the Department of the Interior are relatively new as well. The leadership of all three Agencies will be looking for ways to develop and strengthen our relations with your environmental programs.

I would like to comment briefly how remarkably far we have progressed in slightly over two years in developing a strong environmental agenda, for both the Federal Government and the States. We have a long way to go but it is important to emphasize the very strong and positive efforts our Nation is making to protect and enhance the quality of the environment.

One measure of how far we have traveled is what has been accomplished under the National Environmental Policy Act. Signed into law by the President on the first day of the decade of the 1970's, that Act is just over two years old. Already the effects of its implementation show it to be one of the most significant policymaking reforms in recent history.

The Council on Environmental Quality, created by the Act, has been given strong support by the President through an Executive Order directing us to oversee implementation of the Act throughout the Federal Government. In turn, the Council has published Guidelines for the preparation of environmental impact statements, and virtually all of the relevant Federal agencies have issued more detailed procedures addressed to their particular programs.

The environmental impact statement process has greatly affected Federal decision-making at all levels. The Council has now received

draft and final environmental impact statements on almost 2400 Federal actions. In each case, if the process is working as it should, the agency staff has taken into account environmental considerations in the initial planning for the Federal action. And the environmental impact statement, together with the comments obtained from other agencies and the public, are before the ultimate agency decision-maker to ensure that he is aware of the environmental implications of the options before him.

The implementation of this process is still far from perfect, and one of the Council's primary tasks is to work with the agencies to improve and facilitate their operations under the Act. But the evidence is already clear that the Act has brought a heightened environmental awareness and an improved level of environmental information in the Federal bureaucracy. For example, we see in the Interior Department's proposed new organic legislation for management of the public lands, the AEC's more comprehensive and early review of nuclear power plants, and the new Interior-HUD-DOT coordination implicit in the President's revised State land use policy bill the translation of NEPA policies into better management. Agencies have encountered some difficulties in adjusting to the Act's requirements. But those difficulties are a measure of the significance of what the Act attempts to accomplish. They should not be allowed

to obscure the Act's usefulness in upgrading the quality of analysis of alternatives, consultation, and decision-making. In short, we believe smart agency leadership should see NEPA as an opportunity rather than a stumbling block.

One of your workshops has been considering the desirability of adopting legislation similar to the National Environmental Policy Act at the State level. I am sure that you are canvassing the Federal experience in the course of your deliberations.

The great interest shown by the States in this symposium, and the wide agreement that the Council of State Governments and its supporting groups should take a lead in developing new proposals in the environmental area, are highly encouraging. We will follow your progress closely, try to respond to your requests for technical assistance, probably pirate your good ideas and, if this symposium is as useful as it already seems, find further ways to improve on it and to extend its effectiveness.

PROGRAM

WEDNESDAY, MARCH 15

4:00 - 8:00 p.m.
REGISTRATION — Main Lobby
4:00 - 6:00 p.m. Sky Room
MEETING WORKSHOP
Co-Chairmen & Vice Chairmen with
Program Committee
6:00 - 7:30 p.m.
RECEPTION
Chesapeake Room

THURSDAY, MARCH 16

All Day
REGISTRATION — Main Lobby
9:00 - 10:00 a.m.
PLENARY SESSION
Persian Room I
Presiding Officer:
The Honorable Ray S. Smith, Jr.
Speaker, General Assembly, Arkansas;
Chairman of the Governing Board,
Council of State Governments

Welcome:
The Honorable Russell E. Train, Chairman
President's Council on Environmental
Quality

Addresses:
The Honorable Cecil D. Andrus, Governor,
State of Idaho, Executive Committee,
National Governors' Conference

The Honorable Kenneth M. Curtis,
Governor, State of Maine

10:00 a.m. - 12:00 p.m.
WORKSHOPS
12:00 p.m.
NO SCHEDULED LUNCHEON
2:00 - 5:00 p.m.
WORKSHOPS
6:00 p.m.
CASH BAR
Persian Room II
7:00 p.m.
DINNER
Persian Room II

Address:
The Honorable Rogers C. B. Morton,
Secretary, Department of the Interior

FRIDAY, MARCH 17

9:00 - 10:00 a.m.
PLENARY SESSION
Persian Room I

Addresses:
The Honorable William D. Ruckelshaus,
Administrator, Environmental Protection
Agency

The Honorable Tom McCall,
Governor, State of Oregon

The Honorable Bill Clayton
State Representative, Texas,
Chairman, Intergovernmental Relations
Committee, National Legislative
Conference

10:00 a.m. - 12:00 p.m.
WORKSHOPS

12:15 - 2:00 p.m.
LUNCHEON
Persian Room II

Address:
The Honorable Russell E. Train,
Chairman, President's Council on
Environmental Quality

2:30 - 5:00 p.m.
WORKSHOPS

SATURDAY, MARCH 18

9:00 - 11:00 a.m.
PLENARY SESSION
Reports from Workshops

11:00 a.m.
ADJOURNMENT

11:00 a.m. - 1:00 p.m.
PROGRAM COMMITTEE MEETING
Sky Room

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